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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its seventh session

Chairman-Rapporteur: Mr. Carlos Vargas Pizarro (Costa Rica)

Chairman of the drafting group: Ms. Ann Marie Pennegard (Sweden)

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Introduction

1. The Commission on Human Rights, in its resolution 1998/34, took note with appreciation of the report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (E/CN.4/1998/42 and Corr.1) and requested the working group, in order to continue its work, to meet prior to the fifty-fifth session of the Commission for a period of two weeks, in the course of which the Chairman of the working group, in consultation with the members of the group, may request one additional week with a view to completing expeditiously a final and substantive text, and to report to the Commission at its fifty-fifth session.

2. The Economic and Social Council, in its resolution 1998/35, authorized an open-ended working group of the Commission to meet for a period of two weeks prior to its fifty-fifth session, with a possibility of extending it to three weeks.

I. ORGANIZATION OF THE SESSION

A. Opening of the session and election of officers

3. The working group held its seventh session from 28 September to 9 October 1998. It was opened by the United Nations High Commissioner for Human Rights, Ms. Mary Robinson, who made an introductory statement.

4. At its 1st meeting, on 28 September 1998, the working group elected Mr. Carlos Vargas Pizarro (Costa Rica) as Chairman-Rapporteur. On his proposal Ms. Ann Marie Bolin Pennegard (Sweden) was elected Chairman of the drafting group.

B. Attendance

5. Representatives of the following States members of the Commission on Human Rights attended the meetings of the working group, which were open to all members of the Commission: Argentina, Austria, Brazil, Canada, Chile, China, Cuba, Czech Republic, Denmark, El Salvador, France, Germany, Guatemala, Indonesia, Ireland, Italy, Japan, Malaysia, Mexico, Morocco, Peru, Poland, Republic of Korea, Russian Federation, South Africa, Sudan, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

6. The following States non-members of the Commission on Human Rights were represented by observers at the meetings of the working group: Algeria, Australia, Belgium, Bulgaria, Colombia, Costa Rica, Croatia, Dominican Republic, Egypt, Estonia, Ethiopia, Finland, Georgia, Lithuania, New Zealand, Netherlands, Norway, Portugal, Romania, Saudi Arabia, Slovenia, Slovakia, Spain, Sweden, Syrian Arab Republic, the former Yugoslav Republic of Macedonia and Turkey.

7. The Holy See and Switzerland were also represented by observers.

8. The International Committee of the Red Cross and the following non-governmental organizations were represented by observers at the meetings

of the working group: Amnesty International, Association for the Prevention of Torture, Human Rights Advocates, International Commission of Jurists, International Federation of ACAT (Action of Christians for the Abolition of Torture) and International Service for Human Rights.

9. The Committee against Torture was represented by an observer.

C. Documentation

10. The working group had before it the following texts and documents:

E/CN.4/1998/WG.11/1	Provisional agenda
E/CN.4/1998/42 and Corr.1	Report of the working group on its sixth session
E/CN.4/1998/WG.11/WP.1	Working paper submitted by the Secretariat
E/CN.4/1996/28 and Corr.1	Report of the working group on its fourth session
E/CN.4/1997/WG.11/CRP.1	Comments provided by the Government of Finland
E/CN.4/1997/WG.11/CRP.2	Comments provided by the Government of Cuba
E/CN.4/1996/WG.11/WP.1	Working paper submitted by the Secretariat
E/CN.4/1996/WG.11/WP.2	Working paper submitted by the Secretariat
E/CN.4/1991/66	Letter dated 15 January 1991 from the Permanent Representative of Costa Rica to the United Nations Office at Geneva addressed to the Under-Secretary-General for Human Rights

The text of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and an explanatory note by the Council of Europe.

The text of the Inter-American Convention to Prevent and Punish Torture.

D. Organization of work

11. At its 1st meeting, on 28 September 1998, the working group adopted its agenda, as contained in document E/CN.4/1998/WG.11/1.

12. At the same meeting, on the proposal of the Chairman-Rapporteur, the working group decided, in order to speed up the drafting process, to conduct most of the negotiations in informal meetings, in the form of an open-ended drafting group, as had been the practice in previous years. The drafting

group would then submit its recommendations to the working group in plenary meetings. Such informal meetings of the drafting group, chaired by Ms. A.M. Bolin Pennegard (Sweden), were held from 28 September to 8 October 1998.

13. At the 6th plenary meeting, on 6 October 1998, the working group, upon the proposal made by the Chairman-Rapporteur and supported by the representative of Germany and several other delegations, decided to identify, through informal consultations, the articles and issues that had not yet been agreed upon and the elements that were still outstanding, to clarify the objectives of various articles and the elements to be addressed in each of them, and to reach a common position on which articles or issues were interlinked or formed some sort of "packages" from a substantive point of view. It was the understanding of the working group that such consultations would not imply any commitments on the part of delegations but should serve the purpose of improving and facilitating the drafting process.

14. At the 7th plenary meeting, on 6 October 1998, the observer for Australia, who chaired the informal consultation, reported on their results. He expressed the view that the exercise had been a useful one and that there appeared to be common ground on a number of elements to be contained in the principal outstanding articles. He stated that there was broad agreement that the focus should be on the technical, preventive nature of the protocol.

15. The observer for Australia indicated that with regard to article 1, the following elements were discussed:

(a) The order of the paragraphs: it was felt that the order could be changed so as to focus first on the preventive nature of the protocol and then on how the protocol would operate through visits;

(b) Scope of the article: a number of delegations noted that further work needed to be done on the scope of the article. Language on definitions in the Convention was referred to;

(c) The acceptance of a mission: there was discussion on whether this should be based on a standing invitation to the Subcommittee (i.e. ratification meant acceptance) or whether each mission should be subject to the prior consent of a State party;

(d) There was also discussion on the reference to applicable laws and standards in the article.

16. With regard to article 8, the following elements were addressed:

(a) The close and delicate link to article 1 was generally recognized;

(b) The article should include reference to notification of the mission; consultation on the modalities (including, inter alia, the delegation, persons and places to be visited and dates) and, as a result of the consultation, a mutually arranged technical programme of visits;

(c) It was noted that the article should be read in the context of the principle referred to in article 3.

17. With regard to article 12:

(a) There was general agreement on the element relating to access to persons, places and information;

(b) Another element that needed to be addressed was a reference to national legislation beyond that contained in article 22. Such a reference should not be seen in the context of the relationship between domestic and international law (governed by article 27 of the Vienna Convention on the Law of Treaties). Rather, a number of delegations wanted the relationship between national legislation and the obligations in article 12 to be addressed. The placement of such a reference was also discussed. One aspect of this relationship related to the protection of individual privacy;

(c) A possible reference to the settlement of disputes between the Subcommittee and the State party was raised.

18. On article 13, there was a discussion as to whether there should be a general reference to exceptions to visits or a listing of specific exceptions. Some delegations suggested a merging of the two approaches. It was asked if this second option would not put into question the principles of universality, impartiality and objectivity enshrined in article 3, paragraph 3.

19. Finally, the participants in the informal consultations felt that it could be useful to draw these elements together in some way. To this end, they suggested that the Chairman of the drafting group work informally to draw the elements together in consultation with delegations, in particular in relation to articles 12 and 13 where there seemed to be most common ground.

20. At the 8th plenary meeting, on 7 October 1998, the chief of the Support Services Branch of the Office of the High Commissioner for Human Rights addressed the working group on the question of a possible extension of the session for one additional week, as provided for in Commission resolution 1998/34. The attention of the participants was also drawn to the financial implications of such an extension.

21. At the 9th plenary meeting, on 7 October 1998, the working group agreed with the proposal of the Chairman-Rapporteur not to request an additional week for this year's session of the group.

II. CONSIDERATION AND DRAFTING OF PARAGRAPHS AND ARTICLES OF THE DRAFT OPTIONAL PROTOCOL

22. At the 1st meeting, on 28 September 1998, the Chairman-Rapporteur, in his opening remarks, stressed the urgent need to conclude the work on the draft optional protocol without further delay and stated that it would be especially fitting to do so during the fiftieth anniversary year of the Universal Declaration of Human Rights. He stated that further efforts to eradicate torture should now be concentrated on prevention and recalled that the optional protocol was intended precisely to establish a preventive system

of regular visits to places of detention based on the principles of cooperation, confidentiality, impartiality, objectivity and universality. The main purpose of this new instrument would therefore be to prevent torture, to encourage cooperation and to extend assistance rather than to punish any particular State. The Chairman-Rapporteur called upon all delegations to demonstrate the necessary spirit of cooperation and political will to achieve as much progress as possible.

A. Article 12

23. Upon the proposal by the Chairman-Rapporteur, the working group decided to continue its work on the draft optional protocol by considering article 12 (see E/CN.4/1996/28, annex I, for the text of the outcome of the first reading).

24. At the 1st plenary meeting, on 28 September 1998, the working group, at the invitation of the Chairman-Rapporteur, held a brief exchange of views on various questions relating to article 12.

25. It was generally felt that article 12 was of crucial importance to the whole document since it contained references to the basic commitments that States would accept by ratifying the optional protocol. The purpose of this article was therefore to define what host Governments should offer the Subcommittee in terms of cooperation, information and assistance. The general approach of all delegations was that the contents of the present article 12 could be reduced to several core elements of the visits, including access to the territory, provision of information, access to places of detention and access to individual persons, as well as the opportunity for private interviews with such individuals and the opportunity to communicate with persons who were in a position to supply relevant information.

26. With regard to the issue of domestic law, it was the common understanding that all visits should be effected in the framework of [in accordance with] the national legislation of host countries. This legislation should, however, be consistent with international law, the Charter of the United Nations and other international obligations of the State concerned. It was also emphasized that any reference to national law should only be seen in the context of the conduct of a mission. A view was also expressed that national law and regulations should not be used to hinder the fulfilment of the missions. It was therefore felt that the drafting of a reference to domestic law in another paragraph of article 12 or in a separate article of the protocol, if needed, should be made in a balanced way, and that a proper balance should be established between the rights and duties of the receiving States and those of the Subcommittee members.

27. On the other hand, some delegations felt that it was absolutely necessary to address national legislation in a separate article, and that national legislation could never contradict provisions of the protocol because it had to be consistent with its provisions as part of each State party's international obligations. For those delegations, national legislation was essential to complement and to implement the provisions of the Protocol. They considered that, in the absence of a clear and positive reference to national legislation, many controversies would arise; the Subcommittee might be seen as

a "supranational" body, having "compétence de sa compétence" and enjoying the status of party and judge at the same time, or exercise a unilateral interpretation of States' national legislation.

28. The view was also expressed that a reference to national legislation in an international instrument such as the one that was being drafted should be contemplated on the understanding that respect of the State party's rules and regulations was necessary for the proper fulfilment of the mission and to safeguard its members' integrity, as the non-observance of such regulations might put them at risk, which may compromise the responsibility of the host country.

29. At the 3rd plenary meeting, on 2 October 1998, the Chairman of the drafting group, upon the request of the Chairman-Rapporteur, reported that during the four days of intensive and constructive negotiations, important work had been accomplished on article 12 and the related issue of national legislation, and a number of useful proposals had been submitted. She referred in particular to the text proposed by the delegation of Uruguay which had served as a basis for discussion. However, the drafting group failed to arrive at a final text of article 12. A difficult question still to be solved was that of how article 12 should relate to national legislation and where to place this issue - in article 12 or in a separate article of the optional protocol.

30. At the 11th plenary meeting, on 9 October 1998, the Chairman of the drafting group reported that, owing to time constraints, the group was not able to finalize the examination of article 12 and of the issues relating thereto. She proposed that the text of article 12 (1) and its subparagraphs (a) to (e) as drafted by the group, should be included in annex II to the report of the working group to serve as the basis for future work. This text reads as follows:

"Article 12

"1. Each State Party shall extend full cooperation to the Subcommittee to facilitate the effective fulfilment of its missions within any territory under the jurisdiction of that State Party. In particular, it shall provide:

(a) The delegation with access to, and freedom of movement within, any territory under its jurisdiction for the conduct of the mission;

(b) The Subcommittee or its delegations with all information relevant to the effective conduct of the mission, including in particular on any person or places referred to in article 1;

(c) The delegation with access to and within any place referred to in article 1;

(d) The delegation with access to persons referred to in article 1, and the opportunity for private interviews with them;

(e) The Subcommittee and its delegations with the opportunity to communicate freely with any other person who is in a position to supply relevant information."

31. The Chairman of the informal working group also referred to the understanding reached in the group with regard to this text, as reflected in the three notes (nota benes) reading as follows:

"[N.B.1]. There was an understanding that article 12 has a close relationship with article X dealing with national legislation, inter alia, with regard to issues of safety and privacy.

"It was understood that, based on the outcome of the discussions of article X, article 12, and particularly its chapeau, would therefore have to be revisited and that article 12 may have to be modified based on the terms of article X.

"Some delegations insisted on the need to make a reference in the chapeau of article 12 to article X. They indicated that it was the best way of underlining the close relationship between the two articles.

"[N.B.2] In the context of indent (a), the issue was raised about gaining access to territory which is not under a State Party's jurisdiction but under its actual control. It was noted, however, that the interpretation of the concept of jurisdiction in other instruments included both the notion of formal and actual jurisdiction.

"[N.B.3]. The protection of persons who have communicated with the Subcommittee will be addressed in a separate article."

32. It was proposed by the representative of Germany to reflect article 12 in annex II of the report with a footnote referring to a statement by the Chairman of the drafting group which would contain the wording of the three notes to article 12 (1) informally agreed upon in the drafting group. While this approach was supported by some delegations, there was no agreement on this procedural proposal.

33. At the same meeting, the Chairman of the drafting group also introduced, in her personal capacity, her proposals relating to the issue of national legislation, which reflected various elements which had emerged in her consultations with some delegations. In her view, they could be best placed as paragraphs 2 and 3 of article 12, reading as follows:

"2. In the context of missions, the Subcommittee and its delegations shall pay due regard to relevant rules of domestic and international law in the area of protection of individual rights and freedoms, including on the protection of personal data and property.

"The Subcommittee and its delegations shall also pay due regard to other areas of domestic laws and regulations, provided that such laws and regulations enable, and do not impede, the proper exercise of the tasks accorded to the Subcommittee and its visiting delegations under this protocol.

"3. The State Party and its competent authorities shall aim to resolve with the Subcommittee and its visiting delegations any difficulty arising from the application of this article in the spirit of mutual understanding and cooperation upon which this protocol is founded."

34. Some delegations stated that they did not find the proposal helpful. Other delegations stated that the proposal could form a good basis for further consideration. The Chairman of the drafting group invited delegations to make proposals in the plenary in order to help further consideration at the next session of the working group.

35. The representative of Cuba referred to the proposals made by her delegation during the informal meetings which read as follows:

"The provisions of this Protocol shall apply in accordance with domestic law consistent with the Charter of the United Nations and other international obligations of the State, as well as with the object and purpose of this Protocol."

36. The representative of China proposed the following text as article "X" relating to national legislation:

"Article X

"The provisions of this Protocol shall be applied in accordance with domestic law consistent with the international obligations of the State."

37. The representative of Germany proposed the following text for inclusion as paragraph 2 of article 12 or article "X":

"In conducting a mission, the delegation shall respect domestic law, in particular the principle of individual privacy, consistent with the international obligations of the State Party in accordance with article 27 of the Vienna Convention on the Law of Treaties."

38. The observer for Egypt proposed the following text:

"The provisions of this Protocol shall be applied in accordance with domestic law consistent with the Charter of the United Nations and other international obligations of the State."

39. Following a motion made by the observer for the Netherlands, the debate on article 12 was adjourned.

40. Several delegations submitted their particular views on article 12 and related issues which are given below.

41. The representative of the United Kingdom stated that it was the understanding of his delegation that no decision had yet been taken by the working group on how to deal with the issue of national legislation, whether as part of article 12, as a separate article, or indeed whether the issue should appear in the Protocol at all.

42. The observer for Algeria, referring to article 12 (1), said that the close link between article 12 and article X needed to be emphasized. The "chapeau" of article 12 (1) should therefore appear in annex II together with N.B.1 concerning article X; the two should not be separated. Article 12 (1) could be regarded as a basis for future work only if N.B.1 was taken into account.

43. The representative of Chile stated that, throughout the various sessions of the working group, the Chilean delegation had opposed the inclusion of references to national legislation in the draft protocol because that would, in its view, weaken protection for persons subjected or likely to be subjected to torture. However, given that some delegations found such references to be indispensable, and in a spirit of compromise aimed at reaching a consensus, it could accept a reference to national legislation if it was specified that such legislation must be compatible with international law and consistent with international human rights standards, and that it must not be contrary to the object and purpose of the protocol.

44. On that basis, and on the understanding that the above solution was a compromise to establish that the matter of national legislation would be considered, Chile could support the formula proposed by the Chairman on how article 12 and its nota benes should be considered and included in the report and its annexes. However, that did not prejudge the question of whether to insert such a reference in the context of article 12 or whether to opt for a separate paragraph, an issue that the working group would have to resolve in future discussions.

45. The representative of Uruguay stated that paragraph 1 of article 12, to be used as a basis for future discussions, had been extensively discussed and enjoyed broad support. Nevertheless, it had not been adopted in the first week of work on the understanding that the issue of the links with national legislation should be further analysed. There were several options for the contents and location of any reference to national legislation in the Protocol, ranging from a separate article, the "chapeau" of article 12 (as contained in annex III to E/CN.4/1998/42), a paragraph 2 of article 12 (based on the elements proposed by the Chairman of the drafting group at the present session), or not adding any new reference since article 22 already referred to the obligations of members of the delegation in the conduct of a mission and taking into account that the general principles of international law would apply (i.e. article 27 of the Vienna Convention on the Law of Treaties). Her delegation, like many others that had shown flexibility in considering different proposals, had never agreed to a separate article, as could be implied from a restrictive interpretation of N.B.1, since at that time the working group did not even have a draft proposal to consider. Her delegation was willing to continue at the eighth session any discussion that did not preclude any alternative, it being clear that there were still some substantial differences among the delegations. In the view of her delegation, annex I should include the text of all the articles adopted at second reading; annex II should contain the texts to be used as a basis for further debate. Annex II should therefore include paragraph 1 of article 12 and article 13 (with footnotes) and articles 1 and 8. The text of articles 1 and 8 should not be bracketed, since their substance had not been considered in plenary at the present session. They were just a basis for discussion, and reference

should be made in the relevant parts of the report to the objections that had been raised. The different proposals on national legislation (paragraph 2 of article 12 proposed by the Chairman of the drafting group or a separate article) should be included in the report of the present session.

46. The delegation of France said it considered that a reference to States parties' national legislation in article 12 of the protocol was unnecessary. However, in order to reach a compromise with those delegations wishing such a reference to be included, it had coordinated informal negotiations at the 1997 session which had led to the drafting of a "chapeau". There had been widespread support for that text at the time, although the drafting group had ultimately decided that it was impossible to adopt it without knowing the outcome of the discussion on article 12 (see E/CN.4/1998/42, para. 79).

47. During the negotiations which had taken place at the present session, the French delegation had confirmed its desire to reach a compromise solution. With that in mind it had expressed support for the wording of article 12 proposed by the Chairman of the drafting group on 7 October 1998, which could serve as a worthwhile basis for future work.

48. The question of where to place the reference to national legislation - in article 12 or elsewhere in the text - had not been definitively settled during the discussions at the present session. The French delegation would have no objection to the first paragraph of article 12, as adopted by the drafting group, if necessary together with its nota benes, and the proposal drafted by the Chairman of the drafting group, being placed in an annex. Including both texts in an annex would no doubt have the advantage of presenting a balanced view of the status of work on article 12.

49. The Permanent Missions of Algeria, China, Cuba, Egypt, Saudi Arabia, Sudan and the Syrian Arab Republic submitted their common observations reading as follows:

> "A. The importance of referring to national legislation has to be clearly and positively reflected in the following legal context:
>
> "(i) national legislation is absolutely necessary to complement and implement the provisions of the Protocol;
>
> "(ii) national legislation can never contradict provisions of the Protocol because it has to be consistent with its provisions as part of the international obligations of each State Party;
>
> "(iii) in the absence of a clear reference to national legislation, many controversies will arise. The Subcommittee may be seen as a 'supranational' body, having '<u>compétence de sa compétence</u>', so that it could enjoy a situation of party and judge at the same time, or at least, exercise a unilateral faculty of interpretation of State's national legislation.
>
> "B. To the above-mentioned delegations, the essence of the balance of article 12 was to have a clear-cut obligation upon States on one hand;

on the other hand, national legislation will be addressed in article X. On the basis of this understanding, those delegations accepted article 12 together with its N.B.s as an integral and indivisible package.

"C. The text of N.B.1, prepared by the Swedish delegation and accepted by all delegations, clearly defines the way to address national legislation as being an 'article X', which can only mean 'article X'.

"D. Despite the clarity of the terms of this written understanding as contained in N.B.1, the Chairman of the drafting group then proposed, in the final plenary session, subparagraphs 2 and 3 to article 12 dealing with national legislation. The above-mentioned delegations object to the inclusion of this proposal in the report of the working group for the following reasons:

"(i) It contradicts the understanding reached by all delegations according to which national legislation will be dealt with in article X and not in subparagraphs 2 and 3 of article 12. The Chairman of the drafting group cannot propose something which contradicts an understanding reached under her chairmanship. As a chairman, she is supposed to reflect and respect the views of all countries and the compromise reached under her chairmanship;

"(ii) Many of the other proposals related to national legislation have been discussed much more deeply and gained much wider support but none of them has been reflected in the report by the Chairman of the drafting group.

"E. In the light of the fact that some delegations insisted on separating the two elements of the compromise achieved as a package after difficult negotiations, the above-mentioned delegations are not able to accept paragraph 1 of article 12 to be considered, as agreed, ad referendum.

"F. The outcome of the informal discussions on article 12 was reflected in a 'compromise text' drafted by the Chairman of the drafting group which included a consensual paragraph 1 to article 12, containing clear-cut State obligations and a nota bene (N.B.1) to the effect that those obligations have a close relationship with article X dealing with national legislation.

"For the delegations of Algeria, China, Cuba, Egypt, Saudi Arabia, Sudan and Syria, this compromise was and should remain the basis for a consensus package. Those delegations, therefore, consider the text previously accepted by all delegations (see paras. 30 and 31 above) as the basis for future work regarding article 12.

"G. In addition to the previous points, and without prejudice to their particular views on other main questions, the above-mentioned delegations would like the report of the working group to the Commission on Human Rights to reflect the following:

"(i) Their belief in the objectives of the draft optional protocol and, accordingly, their regret that not only has no progress been achieved, but even a negative atmosphere obviously prevailed;

"(ii) It is even more paradoxal that such a regrettable deadlock has occurred despite the fact that most elements of the crucial articles 12, 13 and article X have been thoroughly debated and a meeting of minds could have been achieved if agreed understandings would have been maintained and respected.

"(iii) Moreover, such a meeting of minds would have served as a basis for a balanced package of compromises concerning the most important elements of the draft optional protocol;

"(iv) In the spirit of the Vienna Declaration and Programme of Action of 1993, the cause of human rights can only be served by respecting all views, searching for balanced compromises, addressing all legitimate concerns, taking due account of existing diversities, transparency, openness and impartiality."

B. Article 12 bis

50. At the 3rd plenary meeting, on 2 October 1998, the Chairman-Rapporteur proposed to keep article 12 bis (see E/CN.4/1996/28, annex I) in the optional protocol and to remove the square brackets at the end of the article. The working group approved this proposal.

51. For the text of the article as adopted, see annex I, article 15.

C. Article 13

52. At the 4th plenary meeting, on 2 October 1998, the Chairman-Rapporteur invited the working group to discuss article 13 (see E/CN.4/1996/28, annex I).

53. The view was expressed that article 13 was one of the provisions that established the necessary balance between the efficacy of the protocol and the needs of States. It was pointed out that exceptional circumstances did exist in reality and should therefore be recognized as such in this instrument. It was stressed, however, that representations could only be made in exceptional circumstances and with a view to a specific visit or a specific interview, not to a mission as a whole. References were often made to article 9 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the wording of which was found by some delegations to be more precise, which could eventually be used by the working group as a basis for discussion.

54. According to another view, article 13 was not needed at all as it was contradictory to the purposes of the protocol and allowed for the possibility of misuse by certain States. It was pointed out that torture was most often

practised in precisely the circumstances that were listed as exceptional in article 13. Some of those circumstances were considered to be neither urgent nor exceptional. The article was thus viewed more as protecting States than preventing torture.

55. Several delegations felt that if article 13 were to be kept in the optional protocol, the list of exceptional circumstances which it contains should be extremely narrow. Paragraph 2 of this article was considered by some speakers to be very important since it offered the possibility of correcting what might be unduly accepted under paragraph 1. It was also indicated that the decision on article 13 would be closely linked to the outcome of negotiations on paragraph 3 of article 18 relating to the issue of whether reservations to the protocol should be acceptable.

56. At the 5th plenary meeting, on 5 October 1998, the observer for Ethiopia proposed to modify the text of this article to read as follows:

"Article 13

"1. In exceptional circumstances, in the context of a mission the competent authorities of the State Party concerned may make representations to the Subcommittee or its delegation against a particular visit. Such representations with respect to that visit may only be made on the grounds that it is temporarily not feasible for reasons of national defence, public safety or serious disorder in the place to be visited. The existence of a declaration of a state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

"2. Following any such representation, the Subcommittee and the State Party shall immediately enter into consultations regarding those circumstances and seek agreement on arrangements to enable the Subcommittee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Subcommittee proposed to visit. Until the visit takes place, the State Party shall provide information to the Subcommittee about any person or place concerned."

57. Many delegations expressed their support for this proposal which they considered to be a good basis for further discussion.

58. The view was expressed that article 9 of the European Convention should be the basis of discussion and that the term "may make representation" in the Ethiopian proposal was not legally correct because the meaning was "may object". It was also found that the terms "temporarily" and "expeditiously" were repetitious as were the last line of paragraph 2 and the first paragraph of article 12.

59. The observer for the International Committee of the Red Cross found terms such as "national defence", "public safety" and "serious disorder" to be

too vague and considered that invoking them might weaken the procedure of visits and open the door to abuses. She proposed replacing the list of exceptional circumstances in paragraph 1 of article 13 by a reference to "imperative security necessity".

60. The representative of China felt that the list of exceptional circumstances should be comprehensive and even exhaustive and proposed adding to it such considerations as the health status of the person to be visited, urgent interrogation for a serious crime, and serious natural disaster.

61. In the discussion that followed, the view was expressed that such terms as "necessity" or "urgency" were also vague and unclear and that it would be preferable to list possible exceptions in order to avoid the category of exceptional circumstances becoming too broad. According to another opinion, it would be impossible to compile a comprehensive list which could cover all possible reasons for suspending visits; a more general formulation should therefore be used.

62. It was also suggested that in discussing article 13, the important principles of cooperation and confidentiality as reflected in other articles of the protocol should be taken into account. In that regard, it was proposed, with reference to the principle of cooperation, that the use of such wording as "objecting to a visit" should be avoided. It was also suggested that instead of drafting an exhaustive list, some rather general provisions could be considered which would also incorporate the notions of cooperation and trust. In that regard, the observer for Sweden proposed returning to the language of the original Costa Rican draft which provided for "urgent and compelling reasons" as the only possible exceptions.

63. Upon the proposal of the Chairman-Rapporteur, article 13 was referred to the drafting group for further examination.

64. At the 9th plenary meeting, on 7 October 1998, the Chairman of the drafting group reported that very fruitful discussions had taken place and that the group was very close to an agreed text. However, several delegations indicated that they did not want to take any decisions with regard to article 13 before the consideration of article 12 was completed. There was therefore a need for further examination of article 13 in conjunction with article 12.

65. At the 11th plenary meeting, on 9 October 1998, the Chairman of the drafting group reported that no consensus had been reached during the informal meetings on the two different approaches to the issue of exceptional circumstances which could provide a valid reason for a State party to object to a visit. One approach was to base this article on the outcome of the first reading text as further elaborated in the proposal submitted by the delegation of Ethiopia (see para. 56 above). Another approach was to find a more general formula based on the elements contained in the original Costa Rican proposal as amended by Sweden.

66. While no consensus had been reached on any of the approaches, the drafting group had decided to submit to the plenary the revised text of article 13 as proposed by the Chairman. The text read as follows:

"Article 13

"1. In exceptional circumstances, in the context of a mission, the competent authorities of the State Party concerned may make representations to the Subcommittee or its delegation against a particular visit. Objections may only be made on urgent and compelling grounds of national defence, public or individual safety or serious disorder in the place to be visited which temporarily prevent the carrying out of a visit. The existence of a state of emergency as such should not be invoked by a State Party as a reason to object to a visit.

"2. Following any such representation, the Subcommittee and the State Party shall immediately enter into consultations regarding those circumstances and seek agreement on arrangements to enable the Subcommittee to exercise its functions expeditiously. Such arrangements may include the transfer to another place within the jurisdiction of the State Party concerned of any person whom the Subcommittee proposed to visit. Until the visit takes place, the State Party shall provide information to the Subcommittee about any person or place concerned."

67. The Chairman of the drafting group indicated that the agreed text was based on the understanding that it was essential for some delegations to point to a close relationship between article 13 and article 12, in particular relating to the issue of national legislation.

68. In the discussion that followed, several delegations pointed out that they were not in a position to approve the text of article 13. It was proposed by other delegations that the text should be included in annex II to the report of the working group to serve as a basis for future discussion. In that regard, some delegations said that they could only accept this proposal if their view was put on record that the content of article 13 was closely related to article 12, including its nota bene (see paras. 30 and 31 above).

69. On this understanding, and upon the proposal of the Chairman-Rapporteur, the working group decided to include the text of article 13 in annex II to the report.

D. Article 14

70. At the 9th plenary meeting, on 7 October 1998, the Chairman-Rapporteur invited the working group to discuss article 14 as adopted at first reading (see E/CN.4/1996/28, annex I).

71. The observer for the Netherlands suggested the following text for this article, which would replace paragraphs 1 to 3 of article 14:

"Article 14

"1. After each mission, the Subcommittee shall draw up a report which shall be submitted to the State Party concerned. The Subcommittee shall finalize its report after fair consideration is given to comments submitted, within a reasonable time, by the State Party concerned. The comments of the State Party shall be annexed to the report.

"2. The Subcommittee shall submit its final report to the State Party concerned. The report shall contain recommendations that the Subcommittee deems necessary. The Subcommittee may consult on the implementation of the recommendations, including on ways and means in which the State Party can be assisted.

"3. Except as otherwise specified in this Protocol, the information gathered by the Subcommittee and its delegation in relation to a mission, its report and its consultation with the State Party concerned shall remain confidential.

"4. At the request of the State Party concerned, the Subcommittee shall publish the report with its annexes. By agreement between the State Party concerned and the Sub-Committee, the report may be published or made public in part.

"5. If the State Party concerned decided unilaterally to make part of the report or its annexes public, the Subcommittee shall consult the State Party concerned on the way to ensure a balanced presentation of the contents of the report. After this consultation, it may issue a declaration or publish the report and the annexes thereto.

"6. No personal data shall be published without the express consent of the person concerned."

72. The observer for the Netherlands also proposed replacing paragraphs 4 and 5 of article 14 by new articles 14 bis and 14 ter reading as follows:

"Article 14 bis

"1. If a State Party fails to receive a mission, or seriously hampers the conduct of a mission in a way contrary to the letter and spirit of the present Protocol, the Subcommittee may request confidentially an explanation from the State Party, which the State Party concerned shall give without undue delay. In view of the explanations given by the State Party, the Subcommittee shall inform the State Party of its views, after which the State Party and the Subcommittee shall enter into consultation.

"2. If after the consultation, the Subcommittee considers that - despite the explanations given - the State Party does not cooperate with the Subcommittee as required in article 13, paragraph 1, of this

Protocol, the Subcommittee may issue a public declaration. This declaration shall only be published after the State Party has been informed of the intention of the Subcommittee. The State Party shall be allowed to annex its views to such a declaration."

"Article 14 ter

"1. If a State Party does not implement the recommendations of the Subcommittee nor take other appropriate measures with a view to improving the situation of persons deprived of their liberty, the Subcommittee may ask the State Party whether it needs assistance in this matter.

"2. The Subcommittee shall consult with the State Party whether other ways exist to improve the situation of persons deprived of their liberty, including through requesting technical assistance.

"3. If the Subcommittee considers that the State Party is unwilling to improve the situation of persons deprived of their liberty, the Subcommittee may inform the Committee against Torture of the situation, after it has consulted the State Party. It shall append to its information to the Committee against Torture any information the State Party may wish to furnish.

"4. The Committee against Torture shall, in its consideration of periodic reports by the State Party, give due attention to the information received from the Subcommittee."

73. Many delegations thanked the observer for the Netherlands for his efforts and creative approach in his attempts to find an acceptable solution to problems relating to this article. While certain elements of his proposals seemed attractive to some delegations, particularly new articles 14 bis and 14 ter, the prevailing opinion was that both the first reading text of article 14 and the texts proposed by the Netherlands needed further consideration.

74. In the general discussion that followed at this and the following (10th plenary) meeting, it was emphasized that article 14 was one of the key articles of the protocol and no hasty decisions should therefore be taken concerning it. It was also emphasized that article 14 was based on the principle of confidentiality. Particular views were expressed by some delegations with regard to such issues as possible publication of reports of the Subcommittee, issuing a public declaration, and the relationship between the Subcommittee and the Committee against Torture. It was pointed out that public declarations should not be seen as sanctions directed against States but as a means to make the protocol more effective in achieving it purposes. Concerns were voiced as to how the different legal regimes governing the work of the Subcommittee and the Committee against Torture could be reconciled.

75. Some delegations considered it to be important that the element of the feasibility of the Subcommittee's recommendations be given due consideration by the working group. They argued that such recommendations should always be

realistic and formulated by the Subcommittee taking due account of the various economic, social and cultural factors that existed in the country of the visit. According to another view, the Subcommittee should formulate its recommendations as it deemed necessary, and the issue of their feasibility could be considered subsequently, in the course of consultations with the State Party concerned. It was also felt necessary that article 14 should include an express reference to the viability of the recommendations made by the Subcommittee in order for the States not to be compromised by proposals which might result in exorbitant economic or social costs.

76. It was also argued, in connection with the newly proposed article 14 bis, that more balance was needed with regard to possible measures to be taken in case of non-cooperation. The view was expressed that the possibility of the Subcommittee "going public" should be limited to cases when all other possibilities were exhausted, and some time-frame should be established.

77. According to another view, the necessary balance was guaranteed by the provision that the Subcommittee may not issue a public declaration unilaterally but only following consultations with the State Party concerned, which could always annex its views to such a declaration. It was also deemed appropriate for any unilateral declaration by the Subcommittee relating to a mission - carried out or not - to be previously made known to the concerned State Party and that its observations be included in such declaration.

78. Several drafting suggestions were made with regard to the proposals submitted by the observer for the Netherlands. The representative of China proposed to add the word "feasible" before "recommendation" in paragraph 2 of article 14. The observer for Switzerland suggested replacing the word "submit" by the word "send" in paragraph 2 of article 14. The representative of Germany felt that the words "unwilling to improve the situation of persons deprived of their liberty" in paragraph 3 of article 14 ter could be replaced by "unwilling to implement the recommendations regarding the situation of persons ... ." The observer for Egypt was of the view that the question was not "unwillingness to implement recommendations" but rather of a dispute to be settled between a State and the Subcommittee. He added that such a definition of the problem dealt with in article 14 had different legal implications and required substantive modification of the proposed text.

79. The Chairman-Rapporteur suggested that both the first reading text of article 14 and the proposal of the Netherlands should be used as a basis for future drafting.

E. Article 18

80. At its 3rd meeting, on 2 October 1998, the working group, upon the proposal of the Chairman-Rapporteur, considered paragraphs 1 and 2 of article 18 (see E/CN.4/1996/28, annex I).

81. The delegations of Brazil, Chile, Croatia, Denmark, Sweden, Finland, the Netherlands, Germany, Uruguay, Costa Rica and Switzerland, as well as Amnesty International, indicated their preference for the lowest (10) number of ratifications so that the protocol could enter into force as quickly as

possible. However, in view of the emerging consensus, they stated their readiness to support, as a compromise but also as an absolute maximum, the requirement of 20 ratifications. The delegations of Brazil, Cuba, Colombia, Denmark, the Russian Federation and the United Kingdom also indicated their support for 20 ratifications.

82. The representative of Australia expressed the preference of his delegation for a number higher than 20 and suggested that the figure could be decided upon completion of the drafting process, as was the normal practice in similar instances. He felt that a higher number of ratifications was an important cost element and that it would allow having parties to the protocol from all regions of the world. Subsequently, the representative of Australia indicated that his delegation would not stand in the way of emerging consensus and might accept the number of 20 ratifications.

83. The representative of the United States of America agreed with the representative of Australia and also argued for a number higher than 20 ratifications, in part because of the Protocol's financial implications. However, he stated that his delegation could agree with the proposed compromise on the number 20.

84. At the same meeting, the working group adopted paragraphs 1 and 2 of article 18 with the insertion of the number 20.

85. For the text of the paragraphs as adopted, see annex I, article 19, paragraphs 1 and 2.

F. Article 19 bis

86. At the 4th plenary meeting, on 2 October 1998, the working group, upon the proposal of the Chairman-Rapporteur, began the consideration of article 19 bis (see E/CN.4/1996/28, annex I). The Chairman-Rapporteur recalled that paragraph 3 of this article had already been adopted at second reading.

87. The observer for the Netherlands proposed to modify the beginning of paragraph 2 to read:

> "2. An amendment adopted in accordance with paragraph 1 of this article shall come into force when accepted by a two-thirds majority ..."

88. In the discussion that followed, the question was raised whether the amendments to the protocol should be approved by a two-thirds majority or by all States parties.

89. The observer for the Netherlands proposed, in view of the technical nature of the protocol, that delegations seek instructions on whether it would be advisable to delete article 19 bis from the text on the understanding that article 40 of the Vienna Convention on the Law of Treaties would apply to this protocol as to any other multilateral treaty. By thus clarifying their positions, delegations and observers could try to find alternative solutions.

90. The observer for the International Commission of Jurists, referring to possible implications of the above proposal, if adopted, pointed out that the draft optional protocol contained not only purely procedural or technical rules but also more substantive provisions relating, inter alia, to the rights and obligations of States, limitations, findings of the Subcommittee, etc. It could therefore be expected that after a certain period of time States parties might decide that some of those provisions should be modified.

91. In that connection, the representative of Australia also underlined the importance of keeping article 19 bis in the protocol and pointed out that the timing of the entry into force of amendments was not regulated by the Convention on the Law of Treaties.

92. The working group continued the consideration of article 19 bis at its 5th plenary meeting, on 5 October 1998.

93. The observer for the Netherlands proposed to modify the last sentence of paragraph 1 of the article to read:

> "Any amendment adopted by the States Parties present at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance."

He also proposed to replace the text of paragraph 2 of article 19 bis by the language used in article 29 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The observer for the Netherlands explained that the purpose of his proposal was to remove the dual system of approval which existed in the present paragraph 2 and to avoid situations when States which are not parties to the protocol, vote in the General Assembly against amendments proposed and adopted by the States parties.

94. Some delegations agreed that the procedure providing for double approval of amendments with two levels of majority was somewhat cumbersome and supported the suggested deletion of any references to the General Assembly in order to be in line with the wording of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

95. The observer for Egypt proposed either to delete the last sentence of paragraph 1 or to introduce the two-thirds majority in both paragraphs.

96. The Colombian delegation suggested that the amendment clause could be modified according to the terms of article 24 of the Convention against Torture, including paragraph 3. The delegation did not deem it juridically appropriate to subject the instrument's amendment procedure to the General Assembly's approval, since the matter was exclusively the competence of the States parties.

97. The observer for the Association for the Prevention of Torture proposed using the language of article 29 of the Convention against Torture, but to delete paragraph 3 of article 19 bis altogether.

98. Another view expressed by some delegations was that the existing text of article 19 bis should be kept unchanged.

99. Upon the proposal of the Chairman-Rapporteur, the consideration of article 19 bis was referred to the drafting group.

100. At the 11th plenary meeting, on 9 October 1998, the Chairman of the drafting group reported that the drafting group had considered various aspects of the question and examined several proposals concerning the procedure to adopt in relation to amendments to the protocol. The drafting group discussed in particular the following questions: whether the procedure contained in draft article 19 bis should be retained, considering that otherwise the procedure established under the Vienna Convention on the Law of Treaties would apply; what majority would be needed to adopt an amendment and to make it enter into force; what majority of State Parties present and voting would be needed at a conference of States parties where amendments would be dealt with; and, finally, whether, in addition to the required approval of States parties, an amendment would also need the approval of the General Assembly.

101. The Chairman of the drafting then introduced the text of paragraphs 1 and 2 of article 19 bis as agreed upon in informal meetings. At the same meeting, the working group adopted this proposal.

102. For the text of the paragraphs as adopted, see annex I, article 22, paragraphs 1 and 2.

G. Article 19 tertio

103. At the 3rd plenary meeting, on 2 October 1998, the Chairman-Rapporteur recalled that the proposal by the delegation of Japan to include this article in the optional protocol had been withdrawn (see E/CN.4/1998/42, para 125). The working group decided that the reference to this article should no longer be kept in the text of the draft optional protocol.

H. Other issues

104. At the 11th plenary meeting, on 9 October 1998, a discussion was held on whether articles 1 and 8, as the texts constituting the basis for future work, should again be included in annex II to the report of the working group, as was the case in 1996 and 1997. The Chairman-Rapporteur proposed that a reference to those articles as contained in document E/CN.4/1998/42 could be made in a footnote in annex II. The working group agreed with this proposal.

105. At the same meeting, the observer for the Netherlands stated that his delegation considered that proposals should not be submitted during the last meeting of the working group. Proposals could be submitted either during the earlier meetings, in writing as separate documents, or during the next session. In the view of his delegation, the meeting at which the report was to be adopted should not be used to take up earlier proposals. Furthermore, the observer for the Netherlands regretted that substantive debate was reopened each time during the debate on the adoption of the report.

106. Other comments and observations received by the secretariat were as follows.

107. The Association for the Prevention of Torture expressed its indignation and concern at the atmosphere prevailing in the meeting room, where the participants had gathered to complete a draft instrument for the prevention of torture that was long awaited by the international human rights community. The Association noted an obvious lack of political will to finalize the optional protocol, which had been strongly encouraged internationally, by the end of 1998. The misunderstandings and enormous mistrust among the delegations had killed all spirit of cooperation as well as the expectations of the international community. The Association fervently hope that the proceedings during the coming year would mark a considerable improvement and not be a repetition of what had happened at the seventh session, where attitudes had emerged that were contrary to the commitments to combating torture which had been made, especially in 1998, the year of the fiftieth anniversary of the Universal Declaration of Human Rights.

108. The delegation of Colombia reiterated its interest in an expeditious approval of the draft protocol. It considered such an instrument grounded - as it should be - in the principles of cooperation and confidentiality, to be of vital importance, and it supported provisions ensuring the Subcommittee free access to places of detention and to alleged torture victims in all cases, provided that full respect of national legislation and internal regulations was guaranteed. Finally, it regretted that the progress of work at the present session had not been as expeditious as expected and called for a rapid and satisfactory consensus to be reached.

109. The delegation of the United States of America stated that the obligations of States under the protocol should be precise, and the protocol should not unintentionally infringe on fundamental human rights. Unfortunately, the proposed article 12 would have that effect. It would create an absolute obligation on any State party to provide access to any place or person described in draft article 1, including any private residence and any strictly private hospital or mental institution if an individual was detained there, possibly with State acquiescence. It would be a violation to refuse any request by the Subcommittee to visit such a place. The delegation of the United States of America noted that the Constitution of the United States guaranteed that its citizens would be secure in their homes, and that those acting under colour of law could not have access to private homes without a court determination that there was sufficient probable cause for search, except under very narrow circumstances. That applied not only to United States government officials, but also to the members of the Subcommittee. Under the text proposed, the Subcommittee would have an absolute treaty right to conduct visits virtually anywhere, without restriction, if it were of the view that a person might be detained with mere State "acquiescence". In the case of the United States, such an unchecked and excessive power would be in violation of the Fourth Amendment to the United States Constitution. This was not acceptable. The delegation of the United States was gratified that, as a result of intense informal discussions at the end of the session, many delegations had now stated that privacy laws and requirements for judicial review of warrants, and human rights protections had to be respected; the proposal submitted by the Chair at the end of the session would be a good basis to resolve the issue.

110. The representative of France said that some delegations had felt that article 13 was closely linked to the preceding article, and that it should also be considered in connection with a reference to national legislation. The French delegation, on the contrary, believed that article 13 could be treated independently of article 12, and without the need for any reference to national legislation. Article 12 set forth the obligations which States parties accepted in order to enable the Sub-Committee to conduct its missions in general, whereas article 13 indicated the exceptional circumstances under which a State could object to a visit, and not to a mission. In other words, article 13 could not be viewed as a general exception to article 12, but in fact constituted a particular modality for its implementation.

III. FUTURE WORK

111. At its 11th plenary meeting, on 9 October 1998, the working group discussed the issue of how its work could best be continued.

112. The representative of Germany welcomed the progress that had been made. In the view of his delegation, the apparent difficulties on some of the remaining issues made it necessary to undertake a series of intensive consultations with the purpose of facilitating a comprehensive agreement. He felt that those consultations could best be carried out by the Chairman-Rapporteur. All efforts should be undertaken to finalize the work of the working group in the coming year.

113. Other delegations also felt that the Chairman-Rapporteur should be authorized to conduct informal consultations in the period between the sessions on any remaining issues at stake, and to make proposals to the working group at its next session. In particular, the observer for Egypt proposed to request the Chairman-Rapporteur to conduct inter-sessional open-ended consultations, with a view to drawing upon the lessons of the seventh session, to exploring future methods of work, i.e. on the basis of an integral package approach, taking into consideration on an equal basis all views and concerns.

114. The working group considered that if it were to be authorized to meet for a further session, there would be a reasonable expectation that it could make progress on the preambular part and the remaining articles of the protocol contained in annex I of document E/CN.4/1996/28 (arts. 12, 13, 14, 15, 18, paras. 3, and 19 bis, paras. 1 and 2) and annex II of document E/CN.4/1997/33 (arts. 1 and 8). The final numbering and placement of articles would be decided when the text of the entire draft optional protocol had been agreed. The technical review of the draft optional protocol would then be undertaken.

IV. ADOPTION OF THE REPORT

115. The report of the working group was adopted at the 12th plenary meeting, on 26 March 1999. The details of the adoption will be included, if necessary, in the addendum to the present report.

Annex I

TEXT OF THE ARTICLES WHICH CONSTITUTE THE OUTCOME OF THE SECOND READING AT THE FIFTH, SIXTH AND SEVENTH SESSIONS a/

Article 2 b/

There shall be established a Sub-Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture which shall carry out the functions laid down in the present Protocol (hereinafter referred to as the Sub-Committee); the Sub-Committee shall be responsible for organizing missions to the States Parties to the present Protocol for the purposes stated in article 1.

Article 3

1. In the application of this Protocol the Sub-Committee and the State Party concerned shall cooperate with each other.

2. The Sub-Committee shall conduct its work within the framework of the Charter of the United Nations and be guided by the purposes and principles therein.

3. The Sub-Committee shall also be guided by the principles of confidentiality, impartiality, universality and objectivity.

Article 4

1. The Sub-Committee shall consist of 10 members. After the fiftieth accession to the present Protocol, the number of members of the Sub-Committee shall increase to 25.

2. The members of the Sub-Committee shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular in criminal law, prison or police administration or in the various medical fields relevant to the treatment of persons deprived of their liberty or in the field of human rights.

3. No two members of the Sub-Committee may be nationals of the same State.

4. The members of the Sub-Committee shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Sub-Committee effectively.

Article 5

1. Each State Party may nominate, in accordance with paragraph 2, up to two candidates possessing the qualifications and meeting the requirements set out in article 4, and in doing so shall provide detailed information on the qualifications of the nominees.

2. (a) Nominees of the Sub-Committee shall have the nationality of a State Party to the present Protocol.

(b) At least one of the two candidates shall have the nationality of the nominating State Party.

(c) Not more than two nationals of a State Party shall be nominated.

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the written consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them.

Article 6

The members of the Sub-Committee shall be elected in the following manner:

1. Elections of the members of the Sub-Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Sub-Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. The initial election shall be held no later than six months after the date of entry into force of the present Protocol.

3. The States Parties shall elect the members of the Sub-Committee by secret ballot.

4. In the election of the members of the Sub-Committee, primary consideration shall be given to the fulfilment of the requirements and criteria of article 4. Furthermore, due consideration shall be given to a proper balance among the various fields of competence referred to in article 4, to equitable geographical distribution of membership and to the representation of different forms of civilization and legal systems of the States Parties.

5. Consideration shall also be given to balanced representation of women and men on the basis of the principles of equality and non-discrimination.

6.* If, during the election process, two nationals of a State Party have become eligible to serve as members of the Sub-Committee, the membership of the Sub-Committee shall be resolved in the following manner in conformity with article 4, paragraph 3:

(a) The candidate receiving the higher number of votes shall serve as he member of the Sub-Committee.

(b) Where the nationals have received the same number of votes, the following procedure applies:

(i) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Sub-Committee;

(ii) Where both nationals have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall be the member;

(iii) Where neither national has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which national shall be the member.

Article 7

If a member of the Sub-Committee dies or resigns or for any other cause can no longer perform the member's Sub-Committee duties, the State Party which nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 4, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9 [6]

The members of the Sub-Committee shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these members shall be chosen by lot by the Chairman of the meeting referred to in article 6, paragraph 1.

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* It was proposed that paragraph 6 be embodied in the rules of procedure of meetings of the States Parties, should they be elaborated. Another proposal was that paragraph 6 be annexed to the present Protocol.

Article 10 [7]

1. The Sub-Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Sub-Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Half plus one members shall constitute a quorum;

(b) Decisions of the Sub-Committee shall be made by a majority vote of the members present;

(c) The Sub-Committee shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Sub-Committee. After its initial meeting, the Sub-Committee shall meet at such times as shall be provided in its rules of procedure.

Article 11 [9]

1. The Sub-Committee may decide to postpone a mission to a State Party if the State Party concerned has agreed to a scheduled visit to its territory by the Committee against Torture, pursuant to article 20, paragraph 3 of the Convention. The dates of the rescheduled mission shall be determined taking into account the provisions of articles 1 and 8.

2. The Sub-Committee, while respecting the principles set out in article 3, is encouraged to cooperate for the prevention of torture in general with the relevant United Nations organs and mechanisms as well as international, regional and national institutions or organizations working towards strengthening the protection of persons from torture and other cruel, inhuman or degrading treatment or punishment.

3. If, on the basis of a regional convention, a system of visits to places of detention similar to the one under the present Protocol is in force for a State Party, the Sub-Committee shall still be responsible for missions to such a State Party under this Protocol, assuring its universal application. However, the Sub-Committee and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to the efficient promotion of the objectives of this Protocol, including on the matter of duplication of work.

Such cooperation may not exempt the States Parties belonging also to such conventions from cooperating fully with the Sub-Committee.

4. The provisions of the present Protocol do not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1997, or the possibility for any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 13 [consolidated 10 and 11]

1. Missions should be carried out by at least two members of the Sub-Committee, assisted by interpreters if necessary. If needed, the Sub-Committee may be assisted by experts.

2. The Sub-Committee shall upon deciding the composition of the mission take into account the particular objectives of the mission.

3. (a) The Sub-Committee shall consult confidentially the State Party concerned, in particular regarding the composition and size of the mission other than with regard to the participating members of the Sub-Committee.

(b) The State Party concerned may oppose the inclusion of an expert or interpreter in the mission to the territory under its jurisdiction, whereupon the Sub-Committee shall propose alternatives.

4. No member of the delegation, with the exception of interpreters, may be a national of the State to be visited. The conduct of the delegation and of all of its members shall be bound by the criteria of independence, impartiality, objectivity and confidentiality.

5. Experts shall be subordinate to and assist the Sub-Committee. With regard to a mission, they shall in all respects act on the instruction of and under the authority of the Sub-Committee. They shall in no case undertake any missions by themselves under the present Protocol.

Article 14

1. In order to establish a list of experts available for the Sub-Committee, each State Party may propose no more than five national experts, qualified in the areas covered by the present Protocol, giving due consideration to gender balance.

2. As needed, the United Nations and specialized agencies may also propose experts to be included on that list.

3. The Sub-Committee will annually notify the States Parties of the comprehensive list of experts.

4. In special cases, where specific knowledge or experience is required for a particular mission, and such knowledge or experience is not available on the list of experts, the Sub-Committee may include in a mission an expert who is not on the list.

5. In selecting experts for a mission, the Sub-Committee shall give primary consideration to the professional knowledge and skills required, taking into account regional and gender balance.

Article 15 [12 bis]

Each State Party shall disseminate information about the present Protocol, the tasks of the Sub-Committee and the facilities to be provided to

the Sub-Committee during a mission to all concerned authorities and ensure the inclusion of such information in the training of relevant personnel, civil, police and military, who are involved in the custody, interrogation or treatment of persons in situations referred to in article 1.

Article 16 [16]

1. The expenditure incurred by the implementation of the present Protocol, including missions, shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Sub-Committee under the present Protocol.

Article 17 [16 bis]

1. A Special Fund shall be set up in accordance with General Assembly procedures, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Sub-Committee to a State Party expressing the need for additional assistance for its ongoing efforts to improve the protection of persons deprived of their liberty.

2. This Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations as well as other private or public entities.

Article 18 [17]

1. The present Protocol is open for signature by any State which has signed the Convention.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 19 [18]

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or instrument of accession, the present Protocol shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 20 [18 bis]

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 21 [19]

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation which occurs prior to the date at which the denunciation becomes effective, or to the actions that the Sub-Committee has decided or may decide to adopt with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Sub-Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of the State Party becomes effective, the Sub-Committee shall not commence consideration of any new matter regarding that State.

Article 22 [19 bis]

1. Any State Party to the present protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional process.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 23 [20]

Members of the Sub-Committee and of missions authorized under the present Protocol shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. In particular, they shall be accorded the privileges and immunities specified in section 22 of the Convention on Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 24

In the conduct of missions, all members shall without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 25 [21]

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Notes

a/ The number in brackets refers to the number of the article in the first-reading text (E/CN.4/1996/28, annex I).

b/ There was a divergence of views in the working group as to the relationship between the new body to be established and the Committee against Torture. A number of delegations supported the view that the new body should be a sub-committee of the Committee against Torture, while some delegations proposed that it should be a body separate from the Committee against Torture.

Annex II

TEXT OF THE ARTICLES WHICH CONSTITUTE THE BASIS FOR FUTURE WORK a/

Article 13

"1. In exceptional circumstances, in the context of a mission, the competent authorities of the State Party concerned may make representations to the Sub-Committee or its delegation against a particular visit. Objections may only be made on urgent and compelling grounds of national defence, public or individual safety or serious disorder in the place to be visited which temporarily prevent the carrying out of a visit. The existence of a state of emergency as such should not be invoked by a State Party as a reason to object to a visit.

"2. Following any such representation, the Sub-Committee and the State Party shall immediately enter into consultations regarding those circumstances and seek agreement on arrangements to enable the Sub-Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place within the jurisdiction of the State Party concerned of any person whom the Sub-Committee proposed to visit. Until the visit takes place, the State Party shall provide information to the Sub-Committee about any person or place concerned."

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a/ See also articles 1 and 8 as contained in document E/CN.4/1997/33, annex II.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Report of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its seventh session

Addendum

1. Following its consideration of the report of the working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its seventh session (E/CN.4/1999/59), the Commission on Human Rights adopted, on 26 April 1999, resolution 1999/30 entitled "Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

2. In paragraph 2 of that resolution, the Commission requested the working group, in order to continue its work, to meet prior to the fifty-sixth session of the Commission for a period of two weeks, with a view to completing expeditiously a final and substantive text, and to report to the Commission at its fifty-sixth session. In paragraph 6, the Commission encouraged the Chairman-Rapporteur of the working group to conduct informal intersessional consultations with all interested parties in order to facilitate the completion of a consolidated text.

3. Since the Chairman-Rapporteur of the working group's seventh session, Mr. Carlos Vargas Pizarro (Costa Rica), would not have been available to conduct the informal consultations during the intersessional period as provided for in Commission resolution 1999/30, an additional meeting of the working group was convened in order to select a person to replace Mr. Vargas Pizarro in carrying out the activities entrusted to him as Chairman. That meeting was held on 29 April 1999.

4. At the proposal of the representative of Costa Rica, Ms. Elisabeth Odio (Costa Rica) was elected Chairperson for the period until the next session of the working group.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy

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Introduction

1. The present report is submitted pursuant to Commission on Human Rights resolution 1998/35. It is the fifth annual report to the Commission by Mr. Param Cumaraswamy since the mandate was established by the Commission in its resolution 1994/41, renewed in resolution 1997/23 and endorsed by the Economic and Social Council in its decision 1997/245 (see also E/CN.4/1995/39, E/CN.4/1996/57, E/CN.4/1997/32 and E/CN.4/1998/39).

2. Chapter I of the present report contains the term of reference for the discharge of the mandate. Chapter II refers to the methods of work applied by the Special Rapporteur in the discharge of the mandate. In chapter III, the Special Rapporteur presents an account of the activities undertaken within the framework of his mandate in the past year. Chapter IV provides a brief discussion on theoretical issues which the Special Rapporteur considers to be important for the development of an independent and impartial judiciary. Chapter V describes standards and guidelines for judges and lawyers that have been adopted or are in the process of being adopted by various associations around the world. Chapter VI contains a brief summary of judicial decisions asserting the importance of and the principle of judicial independence. Chapter VII contains brief summaries of urgent appeals and communications to and from Governments, along with observations of the Special Rapporteur. Chapter VIII contains the conclusions and recommendations of the Special Rapporteur.

I. TERMS OF REFERENCE

3. At its fiftieth session, the Commission on Human Rights, in resolution 1994/41, noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks:

(a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;

(b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;

(c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

4. Without substantially changing the mandate, the Commission endorsed in its resolution 1995/36 the decision of the Special Rapporteur to use, beginning in 1995, the short title "Special Rapporteur on the independence of judges and lawyers".

5. In resolutions 1995/36, 1996/34, 1997/23 and 1998/35, the Commission on Human Rights took note of the annual reports of the Special Rapporteur, expressing appreciation of his working methods, and requested him to submit another annual report on the activities relating to his mandate to the Commission on Human Rights.

6. Several resolutions adopted by the Commission on Human Rights at its fifty-fourth session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention with regard to various countries. These resolutions are, in particular:

(a) Resolution 1998/19 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, in which the Commission called upon all special representatives, special rapporteurs and working groups of the Commission to continue to give attention, within their respective mandates, to situations involving minorities;

(b) Resolution 1998/39 on human rights in the administration of justice, in particular of children and juveniles in detention, in which the Commission called upon special rapporteurs, special representatives and working groups of the Commission to continue to give special attention to questions relating to the effective protection of human rights in the administration of justice, and to provide, wherever appropriate, specific recommendations in this regard, including proposals for measures of advisory services and technical assistance;

(c) Resolution 1998/42 on the right to freedom of opinion and expression, in which the Commission invited once again the working groups, representatives and special rapporteurs to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression as affirmed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other relevant human rights instruments;

(d) Resolution 1998/47 on human rights and terrorism, in which the Commission urged all relevant human rights mechanisms and procedures, as appropriate, to address the consequences of the acts, methods and practices of terrorist groups, in their forthcoming reports to the Commission;

(e) Resolution 1998/51 on integrating human rights of women throughout the United Nations system, in which the Commission requested all human rights treaty bodies, special procedures and other human rights mechanisms of the Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities regularly and systematically to take a gender perspective into account in the implementation of their mandates, and to include in their reports information on and qualitative analysis of violations of human rights of women and girls, and encouraged the strengthening of cooperation and coordination in that regard;

(f) Resolution 1998/57 on advisory services, technical cooperation and the Voluntary Fund for Technical Cooperation in the Field of Human Rights, in which the Commission invited relevant United Nations treaty bodies, special rapporteurs and representatives, as well as working groups, to continue to include in their recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services and technical cooperation in the field of human rights;

(g) Resolution 1998/73 on hostage-taking, in which the Commission urged all thematic special rapporteurs and working groups to address, as appropriate, the consequences of hostage-taking in their forthcoming reports to the Commission;

(h) Resolution 1998/74 on human rights and thematic procedures, in which the Commission requested the thematic special rapporteurs and working groups to: (a) make recommendations for the prevention of human rights violations; (b) follow closely the progress made by Governments in the investigations carried out within their respective mandates; (c) continue close cooperation with relevant treaty bodies and country rapporteurs; (d) include in their reports information provided by Governments on follow-up action, as well as their own observations thereon, including in regard to both problems and improvements, as appropriate; (e) include regularly in their reports gender-disaggregated data and address the characteristics and practice of human rights violations under their mandates that were specifically or primarily directed against women, or to which women were particularly vulnerable, in order to ensure the effective protection of their human rights; also requested the thematic special rapporteurs and working groups to include in their reports comments on problems of responsiveness and the result of analyses, as appropriate, in order to carry out their mandates even more effectively, and to include also in their reports suggestions as to areas where Governments might request relevant assistance through the programme of advisory services administered by the Office of the High Commissioner for Human Rights; and suggested that the special rapporteurs, representatives, experts and working groups of the special procedures of the Commission, acting within their mandates, consider how they could also promote public awareness about human rights and about the particular situation of individuals, groups and organs of society that promoted and protected human rights and fundamental problems;

(i) Resolution 1998/76 on the rights of the child, in which the Commission recommended that, within their mandates, all relevant human rights mechanisms pay attention to particular situations in which children are in danger and where their rights are violated and that they take into account the work of the Committee on the Rights of the Child.

II. METHODS OF WORK

7. The Special Rapporteur, in the fifth year of his mandate, continued following the methods of work described in his first report (E/CN.4/1995/39, paras. 63-93).

III. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Consultations

8. The Special Rapporteur visited Geneva for his first round of consultations from 24 March to 2 April 1998 and in order to present his report to the Commission at its fifty-fourth session. During this period, the Special Rapporteur met with representatives of the Latin American Regional Group, the Asian Regional Group and the Western Group to brief them on his work as Special Rapporteur and to answer any questions they might have. He also met with the High Commissioner for Human Rights, representatives of the Parliament of Zanzibar and Mr. Pierre Cornillon, Secretary-General of the Inter-Parliamentary Union. In addition he held a briefing for interested non-governmental organizations, met individually with representatives of several non-governmental organizations and participated in a briefing on Northern Ireland. The Special Rapporteur also conducted a press briefing during this period.

9. The Special Rapporteur visited Geneva for his second round of consultations from 26 to 30 May 1998 and to attend the fifth meeting of special rapporteurs/representatives/experts and chairmen of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme. During this period he also held consultations with representatives of the Governments of Indonesia and Tunisia.

10. At the invitation of the Chairman of the Sub-Committee on International Operations and Human Rights of the Committee on International Relations of the Congress of the United States, the Special Rapporteur participated in a round table discussion on his report on his mission to the United Kingdom of Great Britain and Northern Ireland (E/CN.4/1998/39/Add.4), held in Washington on 29 September 1998.

11. From Washington the Special Rapporteur proceeded to New York and had consultations in the Office of the Legal Counsel at United Nations Headquarters with regard to the proceedings before the International Court of Justice on the question of immunity of experts on mission for the United Nations.

12. While in Washington and New York, the Special Rapporteur had meetings with NGOs and lawyers on matters of interest to his mandate.

13. The Special Rapporteur visited Geneva for his third round of consultations from 8 to 10 October 1998. During this period he met with the Permanent Representatives of Pakistan and Belgium to the United Nations Office in Geneva, as well as with the High Commissioner for Human Rights and the Chief of the Activities and Programmes Branch.

14. In conjunction with his mission to Belgium from 24 to 26 May 1998, the Special Rapporteur stopped over in Geneva for one day of consultations. Following the mission, he returned to Geneva from 27 November to 1 December 1998 to draft the present report.

15. From 1 to 4 December, the Special Rapporteur held consultations in London with various non-governmental organizations and private individuals, who provided him with follow-up information on his visit to the United Kingdom of Great Britain and Northern Ireland, which had taken place from 20 to 30 October 1997.

16. From 7 to 10 December, the Special Rapporteur attended the hearings before the International Court of Justice in the Hague concerning the question of immunity of experts on mission for the United Nations. During this period, the Special Rapporteur also met representatives of the Minister for Foreign Affairs of the Netherlands to discuss issues relevant to his mandate. Following the hearings, he returned to Geneva and finalized the present report from 10 to 12 December 1998.

B. Missions/visits

17. The Special Rapporteur undertook a follow-up mission to Belgium from 23 to 27 November 1998. The report on this mission will be finalized only in the New Year and, therefore, may not be submitted to the Commission on Human Rights at its fifty-fifth session in written form. However, a summary of this report will in any event be made available to the Commission.

18. During the period under review, the Special Rapporteur informed the Government of Egypt of his wish to carry out an *in situ* investigation. He also reminded the Governments of Indonesia, Pakistan, Tunisia and Turkey of his previous requests to undertake a mission to those countries.

C. Communication with Governments

19. During the period under review, the Special Rapporteur transmitted 11 urgent appeals to the following eight Member States: Argentina, Belarus, Belize, Bolivia, Malaysia (2), Peru (3), Trinidad and Tobago, Turkey.

20. Seeking to avoid unnecessary duplication of the activities of other thematic rapporteurs and country rapporteurs, the Special Rapporteur has joined during the past year with other special rapporteurs and working groups to transmit nine urgent appeals on behalf of individuals to the Governments of the following six countries: Brazil, together with the Special Rapporteur on torture; Nigeria (3), together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights in Nigeria and the Special Rapporteur on freedom of opinion and expression; Philippines, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; Sri Lanka, together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture; Sudan, together with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in the Sudan; Federal Republic of Yugoslavia, together with the Special Rapporteur on torture.

21. The Special Rapporteur transmitted 19 communications to the Governments of the following 18 countries: Cambodia, Colombia, Djibouti, Egypt,

Equatorial Guinea, Kenya, India, Indonesia, Malaysia, New Zealand, Pakistan, Peru, Philippines, Russian Federation, Sri Lanka, Sudan (2), Tunisia, United Kingdom of Great Britain and Northern Ireland.

22. The Special Rapporteur has also joined with other special rapporteurs to transmit two communications to the Governments of the Sudan, together with the Special Rapporteur on the situation of human rights in the Sudan, and of Turkey, together with the Special Rapporteur on violence against women, its causes and consequences.

23. The Special Rapporteur received replies to urgent appeals from the Governments of the following four countries: Colombia, Philippines, Sudan, Turkey.

24. Replies to communications were received from the Governments of the following 8 countries: Colombia, France, India, Kenya, Sri Lanka, Sudan (2), Tunisia, Turkey. Other communications were received from the Governments of Bahrain and Peru (3).

25. In addition to the Special Rapporteur's participation in the special rapporteurs' meeting, as well as in joint urgent actions and communications transmitted to Governments, the Special Rapporteur reiterated his request to undertake a joint mission to Tunisia with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in order to assess the human rights situation regarding freedom of opinion and the independence of judges and lawyers.

D. Cooperation with intergovernmental and non-governmental organizations

26. The Special Rapporteur has continued the dialogue with intergovernmental and non-governmental organizations in the implementation of his mandate and thanks these organizations for their cooperation and assistance during the year.

E. Cooperation with other United Nations procedures and bodies

1. Special rapporteurs and working groups of the Commission on Human Rights

27. The Special Rapporteur has continued to work closely with other special rapporteurs and working groups. As previously indicated, in order to avoid duplication he has, where appropriate, made joint interventions with other special rapporteurs and working groups. On issues relevant to his mandate, the Special Rapporteur makes reference in the present report to reports of other special rapporteurs and working groups.

2. The Centre for International Crime Prevention of the United Nations Secretariat

28. In his third and fourth reports (E/CN.4/1997/32, paras. 26-37; E/CN.4/1998/39, paras. 23-24), the Special Rapporteur referred to the

importance of the work done by the former Crime Prevention and Criminal Justice Division in overseeing the implementation of the Basic Principles on the Independence of the Judiciary, and to the need for the Special Rapporteur to work closely with that Division.

29. The Special Rapporteur attended the seventh session of the Commission on Crime Prevention and Criminal Justice on 22 and 23 April 1998 and made a statement on 22 April 1998, in which he said that crime prevention and bribery in international commercial transactions required the cooperation not only of the international community but the political will of Governments to organize their domestic systems of justice to meet the challenges. One of the main institutions must necessarily be the judiciary, complemented by an effective prosecutorial service and an independent legal profession. Nevertheless, cooperation among Member States to combat those global menaces could only be effective if uniform international standards were approved and used by Member States for the organization of their judicial systems. The Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors provided general guidelines for Member States to apply in their domestic justice systems.

30. He added that in the four years since the creation of his mandate and his appointment, in his interventions concerning alleged attacks on the independence of judges and lawyers, he had drawn the attention of Member States to these standards. The responses could be classified into four categories: (a) Member States who were fully aware of and endeavouring to apply them; (b) Member States who were aware of them but resisted applying them for one reason or another; (c) Member States who were aware of them but, for want of resources, both financial and human, were unable to apply them; (d) Member States who were not aware of the standards.

31. The Special Rapporteur welcomed the work undertaken by the Commission on Crime Prevention and Criminal Justice through the Centre for International Crime Prevention to monitor the use and application of the standards. He noted that two years previously the Centre had sent out questionnaires to Member States to ascertain the use and application of the Basic Principles on the Independence of the Judiciary. Although less than 50 per cent of the Member States had responded to the questionnaire, that should not deter the Centre from pursuing its information gathering. In that regard, he urged the Commission to give its approval to two draft questionnaires before the seventh session, on lawyers and prosecutors.

32. He also urged that there should be meaningful follow-up to the responses by processing and evaluating them to ascertain the actual situation in the countries concerned, and suggested that NGO's like Bar Associations and other groups involved in the administration of justice should be consulted. In that regard, he welcomed the recommendations of the 1998 Onati Workshop on the Impact of International Crime Prevention and Criminal Justice Standards on National Practices.

33. The Special Rapporteur also pointed out that many Member States, particularly countries in transition, were aware of the standards but were not able to apply them because of resource constraints. Those States needed considerable expert and technical assistance in structuring their judicial

systems. He welcomed the efforts by the Centre to address that serious problem. Similarly, the High Commissioner for Human Rights was giving priority to technical assistance to those States in that area. One project being undertaken by the High Commissioner was a comprehensive training manual for judges.

34. He concluded by welcoming the opening statement of the Executive Director, Mr. Pino Arlacchi. In the mid-term plan for 1998-2001, he had identified six objectives for the Centre. The Special Rapporteur noted that all of them were pertinent. In so far as standards were concerned, the Special Rapporteur wholeheartedly supported the need to raise public awareness of the United Nations standards and norms.

3. Activities and Programmes Branch of the Office of the High Commissioner for Human Rights

35. As mentioned in his third and fourth reports (E/CN.4/1997/32, para. 31; E/CN.4/1998/39, para. 26), the Special Rapporteur is collaborating with the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights to develop a training manual for judges and lawyers in the context of the United Nations Decade for Human Rights Education. The Special Rapporteur attended an expert meeting from 5 to 8 May 1997 to review the draft manual. The draft will be revised on the basis of substantive comments made by the participants in the expert meeting and will be piloted through forthcoming courses to be offered to judges and lawyers under the OHCHR programme of technical cooperation, before final publication. The Special Rapporteur expects this manual to constitute a comprehensive curriculum for the training of judges and lawyers on international human rights standards, to be adapted case by case to particular national needs and legal systems.

4. Promotional activities

36. As stated in his third and fourth reports, the Special Rapporteur considers promoting the importance of the independence of the judiciary and the legal profession for respect of the rule of law in a democratic society, in the spirit of the Vienna Declaration and Programme of Action, to be an integral part of his mandate. In this regard, the Special Rapporteur continued to receive invitations to address legal forums, seminars, conferences and training programmes. Owing to other commitments, the Special Rapporteur could not accept all the invitations. Nevertheless, he accepted the following invitations:

(a) 23 March, in Brussels, at the invitation of the Commission Nationale De La Magistrature, he addressed the first-ever Belgian National Conference of Judges on the subject of "Judicial independence".

(b) 4-6 June, at the invitation of the Norwegian Association of Judges, he addressed the Norwegian Triennial Conference of Judges in Trondheim on "A global view of the independence of the judiciary - attacks, dangers and today's status".

(c) 12-14 June, in Hong Kong, at the invitation of the Human Rights Institute of the International Bar Association, he spoke on the "Independence of the judiciary" at a conference on the worldwide application of the International Covenant on Civil and Political Rights.

(d) 20-22 July, in Cape Town, South Africa, at the invitation of the International Commission of Jurists to its triennial meeting and conference on the rule of law in a changing world, he addressed a panel discussion on "The United Nations Basic Principles and the work of the Special Rapporteur on the independence of judges and lawyers".

(e) 5-7 October, in Larnaca, Cyprus, at the invitation of the Commonwealth Magistrates and Judges Association, he spoke on the subject "international and regional standards for the protection of judicial independence and the role of the Special Rapporteur on the independence of judges and lawyers" at a seminar on the role of the judiciary in developing and maintaining a vibrant human rights environment in the Commonwealth.

37. The addresses delivered by the Special Rapporteur at these conferences and seminars are published by the organizers for further dissemination.

IV. THEORETICAL ISSUES

A. Establishment of an international criminal court

38. The Special Rapporteur is pleased to note the important strides the international community has taken towards the establishment of the International Criminal Court. The Rome Statute of the International Criminal Court, adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries, contains a number of provisions that safeguard the independence of the Prosecutor, but in a manner that promises judicial oversight of prosecutorial discretion. In particular, the Court may exercise its jurisdiction if, pursuant to article 13 of the Statute, either the United Nations Security Council or a State Party to the Statute refers a situation to the Prosecutor. Alternatively, pursuant to article 15.1, "the Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court". Paragraphs 2 to 6 of article 15 set out the powers and responsibilities of the Prosecutor in this connection, including the obligation of the Prosecutor to submit the grounds upon which he or she believes "there is a reasonable basis to proceed with an investigation" to the Pre-Trial Chamber of the Court. Article 15.6 provides: "If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence." The Special Rapporteur believes these, along with certain other provisions, sketch out an adequate measure of independence for the Prosecutor.

39. However, article 16, entitled "Deferral of investigation or prosecution", gives considerable cause for concern. Article 16 stipulates: "No investigation or prosecution may be commenced or proceeded with under this

Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions." Article 16 leaves the Security Council a large role by authorizing it to delay investigations or prosecutions for a year or more. The political role of the Security Council in triggering the Court's investigation and prosecution powers, may, depending on how this role is played, substantially undermine the judicial independence of the Court by precluding judicial review of situations politically sensitive to one or other of the permanent members of the Council, who, of course, wield the power of veto.

40. Thus, the Special Rapporteur is pleased that the Rome Statute has been adopted, but retains serious misgivings about the potential for political interference from Security Council members in the functions of the Prosecutor. It can only be hoped that the Security Council will exercise its authority wisely and in the interests of the international community as a whole.

B. Honour killings

41. The Special Rapporteur on extrajudicial, summary or arbitrary executions has drawn the Special Rapporteur's attention to the problem of so-called "honour killings", which are reported to take place in some countries of the Middle East, Latin America and South Asia, where husbands, fathers or brothers have gone unpunished after having murdered their wives, daughters or sisters in order to defend the honour of the family. She has also received reports of such cases in Turkey. The Special Rapporteur on extrajudicial, summary or arbitrary executions has been informed that men who commit "honour killings" normally receive considerably shorter sentences, as the courts view defence of the honour of the family as a mitigating circumstance (see E/CN.4/1999/39, paras. 74-75).

42. This information is of grave concern to the Special Rapporteur. He will continue to work with the Special Rapporteur on extrajudicial, summary or arbitrary executions to study this phenomenon. They will report their findings to the Commission on Human Rights at its fifty-sixth session.

V. STANDARDS

43. In his second and third reports the Special Rapporteur made reference to the Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA region.

44. The Commonwealth Magistrates and Judges Association drew the Special Rapporteur's attention to the Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence. This set of guidelines were adopted at a meeting of the representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates and Judges Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association, held at Latimer House in the United Kingdom from 15 to 19 June 1998. The Guidelines, which cover, inter alia, matters relating to judicial autonomy, funding, training, ethics and accontability mechanisms,

will be proposed for consideration by the Commonwealth Heads of Government meeting and for effective implementation by member countries of the Commonwealth.

45 The Special Rapporteur was invited to Larnaca, Cyprus, by the Commonwealth Magistrates and Judges Association on 5 and 7 October for a seminar on these Guidelines and in particular for discussion on a mechanism for implementation. In his address to the seminar the Special Rapporteur said that when the Guidelines had been adopted by the Commonwealth Heads of Government he would refer to these Guidelines in addition to the United Nations Basic Principles and the Beijing Declaration when intervening with Commonwealth Governments.

46. In this regard the Special Rapporteur would also like to refer to Council of Europe Recommendation No. R (94) 12 on the independence, efficiency and role of judges, adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies.

47. With the adoption of the Latimer House Guidelines for the Commonwealth there are today two sets of intergovernmental standards in addition to the United Nations Basic Principles.

48. The Special Rapporteur has also learnt that the International Association of Judges, a non-governmental association, is in the process of adopting a set of standards described as "The Universal Charter of the Judge".

49. The Special Rapporteur, while expressing his appreciation to these organizations concerned to set standards for the promotion and protection of judicial independence, also expresses some concern over possible proliferation of standards. If these additional standards are needed to supplement the gaps in the United Nations Basic Principles then it may be that the Basic Principles need to be reviewed.

VI. JUDICIAL DECISIONS REFLECTING THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

50. The Special Rapporteur welcomes the following decisions of the apex courts of Canada, Norway and India asserting the importance of and the principle of judicial independence.

(a) The Canadian Supreme Court, in the case of Reference re: Remuneration of Judges of the Provincial Court of Prince Edward Island and others 1997, in interpreting sections 96 to 100 of the Constitution Act 1867 and S.11 (d) of the Canadian Charter of Rights and Freedoms held that judicial independence was an unwritten norm and had grown into a principle that extended to all courts, not just the superior courts of Canada.

(b) The Norwegian Supreme Court, in the case of Jens Viktor Plahte vs. The State December 1997 in case No.82 B/1997 No.108/1957, held that temporary judges who did not have the same protection of security of tenure as permanently appointed judges were incompetent to adjudicate on certain disputes to which the State or any of its organs were parties. The court said, inter alia:

"The courts guarantee the rule of law for citizens in their relations with the legislative power and the executive power - they can try the constitutionality of laws and have judicial power to review the decisions of the executive. Since the State is a party in a considerable amount of cases decided by the courts, it is especially important that the law-seeking public can have full confidence in the individual judge making his judgement without having to consider any negative consequences for his position. The judges' irremovability in accordance with section 22 of the Norwegian Constitution is therefore fundamental for the trust that the law-seeking public can have in their objectivity.

"Temporary judges do not have the same protection of their positions as permanently appointed judges in office have. For practical reasons one cannot completely avoid the use of temporary appointed judges, but because of the difference in the protection of their positions, the use is open to objections and should be restricted as far as possible. This has also been emphasized by the Supreme Court, see especially in Rt. 1984, page 979 and Rt. 1995, page 506."

(c) Very recently, in October 1998, the Supreme Court of India, in the case of Special Reference No.1 of 1998 (JT 1998 (5) S.C., reviewing its own earlier decision of 1993 on the procedure for the appointment of judges to the Supreme Court and High Court as laid down under the Constitution held, inter alia, that the expression "consultation with the Chief Justice of India" required consultation with a plurality of judges in the formation of the opinion of the Chief Justice of India. The sole individual opinion of the Chief Justice does not constitute "consultation" within the meaning of the Constitutional provisions. This decision removed the doubt which arose in the 1993 decision of the same court (commonly referred to in the legal fraternity as the "second Judge's case") that the sole opinion of the Chief Justice had primacy.

51. Principle 10 of the Basic Principles on the Independence of the Judiciary provides, inter alia, "Any method of judicial selection shall safeguard against judicial appointments for improper motives". It is therefore imperative that the selection mechanism should never reside in the personality of a single person, however high and eminent his office may be. This judgement of the Indian Supreme Court will add lustre to the jurisprudence of judicial independence.

V. COUNTRY SITUATIONS

A. Introduction

52. This chapter contains brief summaries of the urgent appeals and communications transmitted to Governments between 11 December 1997 and 30 November 1998, as well as of replies to the allegations received from the Governments between 29 January 1998 and 15 December 1998. In addition, the Special Rapporteur takes note in this chapter of the activities of other mechanisms which are related to his mandate. Where he has deemed it necessary, the Special Rapporteur has included his own observations. He wishes to emphasize that the appeals and communications reflected in this

chapter are based exclusively upon information that has been transmitted to him directly. Where information was insufficient, the Special Rapporteur was not in a position to act. He also recognizes that problems concerning the independence and impartiality of the judiciary are not confined to the countries mentioned in this chapter. In this regard, he wishes to emphasize that readers of the present report should not interpret the omission of a particular country from this chapter as indicative that the Special Rapporteur considers that there are no problems with the judiciary in that country.

53. In preparing this report, the Special Rapporteur took note of reports of his colleagues: Mr. Michel Moussalli, Special Representative of the Commission on the situation of human rights in Rwanda; Mr. Adama Dieng, independent expert on the situation on human rights in Haiti; and Mr. Jiri Dienstbier, Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (the Special Rapporteur has dealt separately, by country, with the reports of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia); Mr. Maurice Copithorne, the Special Representative on the situation of human rights in the Islamic Republic of Iran and Mr. Thomas Hammarberg, the Special Representative of the Secretary-General on the situation of human rights in Cambodia.

B. Situations in specific countries or territories

Argentina

Communication to the Government

54. On 26 August 1998, the Special Rapporteur sent an urgent appeal concerning Federal Judge Roberto Marquevich, who had initiated an investigation into the abduction by security forces of children whose parents involuntarily disappeared between 1976 and 1978. According to the source, on 9 June 1998, Judge Marquevich ordered the arrest of the former army commander and president of the first military junta in Argentina, Jorge Rafael Videla. The source reported that Judge Marquevich and his family had been subjected to death threats. The source also reported that human rights lawyer Sergio Smietniansky was threatened on 3 July 1998, just a few hours after the federal police evicted 50 families whom the lawyer had been defending from a municipal property in the Flores district of Buenos Aires.

Observation

55. The Special Rapporteur awaits a response from the Government to this communication.

Bahrain

Communication from the Government

56. On 5 May 1998, the Permanent Representative of the State of Bahrain to the United Nations Office in Geneva sent a letter to the Special Rapporteur in which he enclosed a translation of a press statement distributed by the Islamic Movement of the Freedom of Bahrain dated 25 April 1998. The press

statement alleged that the Chairman of the fifty-fourth session of the Commission on Human Rights had asked the delegation of Bahrain which participated in the meetings of the said Commission twice to stop the torture and humiliation to which Shaikh Al Jamry was exposed. The Permanent Representative informed the Special Rapporteur that H.E. Mr. Jacob S. Selebi, Chairman of the fifty-fourth session of the Commission had never raised the issue of Al-Jamri with the delegation of Bahrain during the whole session. The Permanent Representative called upon the Special Rapporteur to note "the extent of lies and propaganda of these terrorists groups, which try by all means to manipulate the United Nations organs and system."

Observation

57. The Special Rapporteur thanks the State of Bahrain for this communication and has taken note of its contents.

Belarus

Communication to the Government

58. On 18 October 1998, the Special Rapporteur sent an urgent appeal concerning Ms. Vera Stremkovskaya, an attorney, who, it was reported, had been summoned for conversations to the Collegium of Advocates and the Ministry of Justice. According to the source, Ms. Stremkovskaya had been informed that she had been accused of violating legal ethics, evidently in connection with remarks she had made at a briefing for the International League for Human Rights on 23 September 1998. She had been informed that she would be disbarred. It was believed that the Collegium presidium would meet the following week to set up a commission to disbar Ms. Stremkovskaya on the grounds of unethical and illegal behaviour while abroad.

Observation

59. The Special Rapporteur awaits a response from the Government to this communication.

Belize

Communication to the Government

60. On 18 October 1998, the Special Rapporteur sent an urgent appeal concerning the possible removal from the bench of Chief Justice Manuel Sosa of the Belize Supreme Court. According to the information received, Chief Justice Sosa had been appointed by the Prime Minister. In accordance with the Constitution, the Prime Minister had requested the view of the leader of the opposition party, at the time the People's United Party (PUP), on this appointment, but the latter requested deferment of the required consultation. Nevertheless, the appointment was made. Upon the return to power of PUP following the general elections, it was reported that the Attorney General would imminently take certain measures to rescind the appointment. It was alleged that the measures to be taken were contrary to the procedures established by the Constitution for the removal of the Chief Justice.

Observation

61. The Special Rapporteur awaits a response from the Government to this communication.

Bolivia

Communication to the Government

62. On 19 February 1998, the Special Rapporteur sent an urgent appeal to the Government concerning Mr. Waldo Albarracin, a lawyer and President of the Permanent Assembly of Human Rights of Bolivia and a candidate for the position of Ombudsman. It was reported that Mr. Albarracin and his two children had been threatened on the telephone on 5 February 1998. In this regard, the Special Rapporteur recalled that he and the Special Rapporteur on extrajudicial, summary or arbitrary executions had sent jointly an urgent action appeal on 24 February 1997 concerning previous death threats that Mr. Albarracin had received.

Observation

63. The Special Rapporteur awaits a response from the Government to this communication.

Bosnia and Herzegovina

64. In his report to the General Assembly (A/53/322, paras. 27-29), the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia reported that on 20 May 1998, the Ministers of Justice of the Federation of Bosnia and Herzegovina and the Republika Srpska signed a memorandum of understanding on the regulation of legal assistance between institutions of the Federation of Bosnia and Herzegovina and the Republika Srpska.

65. On 31 July 1998, the High Representative imposed a law on courts in the Herzegovina-Neretva Canton, restructuring the judiciary of the canton consistent with the new system in the Federation. Under the new law, there will be one common court for the canton at Mostar, and the ethnic composition of judges in the canton will reflect the results of the 1991 census.

66. Following an agreement among relevant cantonal authorities, this year, Central Bosnia became the first canton in which a Judicial Appointments Commission was established to review all applications and ensure an impartial and just selection process.

67. In a joint press statement, the Office of the High Representative, the Office of the United Nations High Commissioner for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) expressed their serious concern about the fairness of the trial of Ibrahim Djedovic, who was convicted on charges of war crimes against the civilian population and sentenced to 10 years' imprisonment by the Sarajevo Cantonal Court on 6 October 1998. On account of several observed irregularities, such as the

violation of the right to legal counsel and the summary rejection by the court of 30 defence witnesses, there are serious concerns over the impartiality of the court in this case (A/53/322/Add.1, para. 8).

Observation

68. The Special Rapporteur views the trial of Ibrahim Djedovic with serious concern and will liaise with the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia.

Brazil

Communication to the Government

69. On 2 July 1998, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on torture concerning Mrs. Edna Flor and Mr. Donizetti Flor, lawyers of the Centro de Defensa dos Direitos Humanos Antoñio Porfirio dos Santos in Aracatuba, São Paolo state. They were believed to have received death threats from an unidentified man on the telephone, on 13 and 14 June 1998, following which two handmade bombs were allegedly thrown in front of their office. The source alleged that these death threats might constitute a retaliation for the lawyers' denunciation of several cases of torture perpetrated by members of the civilian and military police.

Observation

70. The Special Rapporteur awaits a response from the Government to this communication.

Cambodia

Communication to the Government

71. On 11 March 1998, the Special Rapporteur sent a communication to the Government concerning an order issued by Minister of Justice Chem Snguon suspending three Appeal Court judges and ignoring their decision of 26 December 1997 to overturn on appeal the conviction of Chau Sakhon by a municipal court in June 1997. According to the source, there was no legal provision under which the Minister has the authority to suspend a judge.

Report of the Special Representative of the Secretary-General on the situation of human rights in Cambodia

72. In his report to the General Assembly, the Special Representative of the Secretary-General on the situation of human rights in Cambodia (A/53/400, paras. 73-80) reported that in general, some progress had been made in establishing institutions called for by the Cambodian Constitution and essential for the strengthening of the rule of law in Cambodia. The Supreme Council of the Magistracy had been convened for the first time in December 1997 and was facing a heavy backlog.

73. Further, there had been considerable debate on both the legality of the appointment processes and about the qualifications of the individuals appointed to Cambodia's Constitutional Council in 1998.

74. The report also indicated that the problem of frequent executive interference and military intimidation in judicial matters, and the lack of independence of the judiciary were continuing in 1998.

Observation

75. The Special Rapporteur will continue to monitor the transition process, in particular with regard to the independence of the judiciary.

Colombia

Communication to the Government

76. On 19 April 1998, the Special Rapporteur sent a communication to the Government concerning the assassination of Mr. Eduardo Umaña Mendoza, a well-known lawyer and human rights defender. According to the source, this murder was perpetrated on 18 April 1998 in the city of Bogotá at Mr. Umaña's office by two unidentified men and an unidentified woman who were posing as journalists. It was further reported that Mr. Umaña had been the recipient of numerous death threats for several years owing to his work as a human rights lawyer. In this regard, the Special Rapporteur recalled that his report on his mission to Colombia contained testimony provided to him by Mr. Umaña concerning the nature of the death threats made against him and the reasons why he had refused security from the State (see E/CN.4/1998/39/Add.2, paras. 123 and 124). It was also reported that the murder of Mr. Umaña was preceded by the murders of two other human rights defenders, Ms. María Arango Ponnegra, on 16 April 1998 in Bogotá, and Mr. Jesús María Vallen Jaramillo, on 27 February 1998 in Medellín; Mr. Vallen Jaramillo was a lawyer and the President of the Committee of Human Rights in Antioquia.

Communications from the Government

77. On 11 February 1998, the Permanent Mission of Colombia sent a note verbale to the Special Rapporteur regarding the allegations of threats and persecution which had been brought to his attention concerning the lawyers Alirio Uribe Muñoz, Miguel Puerto Barrera and Rafael Barrios Mandivil, members of the "José Alvear Restrepo" lawyers' collective. The Government informed the Special Rapporteur that the terrorism unit of the Regional Directorate of Authorities of Santa Fé de Bogota, after having gone through its files, had not found any evidence of the existence of the denunciation of the 13th Brigade of the National Army concerning the lawyers. On the contrary, the terrorist unit was investigating the threats against those persons. In that regard, the terrorism unit had asserted that the investigation into the threats received by Rafael Barrios Mendivi was making progress. That inquiry had started on 10 August 1994, with the investigations being handed over to the proper authorities. On 15 December 1997, it was integrated into the investigations being carried out in the cases of threats against Alirio Uribe Muñoz and Miguel Puerto Barrera. Additionally, the Administrative Department of Security had informed the Director-General that the Directorate of

Protection was making a technical study of the threats against these lawyers. That study would be given to the Committee of Regulation and Evaluation of Risks. Any steps taken by the Committee would be transmitted to the Special Rapporteur.

78. On 16 April 1998, the Government sent a letter in reply to the Special Rapporteur's letter of 17 November 1997 concerning the death threats received by and the persecution of the lawyers Alirio Uribe Muñoz, Miguel Puerto Barrera and Rafael Barrios Mendivil. The Colombian authorities reaffirmed that there was no evidence of the existence of an intelligence document accusing Alirio Uribe Muñoz of belonging to a support network for the Union Camilista del Ejercito Nacional de Liberacion. Additionally, no judicial evidence had been found that he had been declared a target by the 13th Brigade of the National Army. On the contrary, they expressed their interest in receiving information from the denunciators that would lead to clarification of when and by whom those threats had been made, so that they could initiate a disciplinary or penal investigation.

Observations

79. The Special Rapporteur thanks the Government for its responses. However, he notes that he has not yet received a response to his letter of 19 April 1998 concerning the assassination of Eduardo Umaña Mendoza.

Croatia

80. The Special Rapporteur took note of the report of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia to the General Assembly, in which he noted that, although promoted and supported by local and international civil rights organizations, a wholly independent judiciary was still a distant goal in the Republic of Croatia. For example, in late May 1998, the President of the Supreme Court, Milan Vukovic instructed the country's courts not to provide international organizations with information about their work. That action has been interpreted as an attempt to curtail legitimate monitoring activities (A/53/322, paras. 56-57).

81. The Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia also reported that on 1 October 1998, at the conclusion of controversial disciplinary proceedings, the State Judicial Council had ruled in favour of the final dismissal of the former President of the Supreme Court of Croatia, Krunislav Olujic, who could now lodge an appeal with the House of Counties. Questions had been raised as to whether Mr. Olujic's right to defence had been curtailed during the trial (A/53/322/Add.1, para. 21).

82. The war crimes trial of four defendants belonging to the so-called Sodolovci group, which began on 10 September 1998, is continuing. The four defendants were granted a retrial without being subject to detention - which would be mandatory for the charges that they are facing. Also, another hearing in the ongoing war crimes trial of Goran Vusurovic, scheduled for 1 to 3 September 1998, was postponed.

Observations

83. The Special Rapporteur will continue to liaise with the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia concerning the independence of the judiciary and the legal profession in Croatia.

Djibouti

Communication to the Government

84. On 11 March 1998, the Special Rapporteur sent a communication to the Government concerning the case against Mr. Ahmed Boulaleh, Mr. Ali Mahamade Houmed and Mr. Moumin Bahdon Farah, three former members of the Parliament of Djibouti. According to the source, on 15 June 1996, the parliamentary immunity of the above-mentioned individuals was lifted to permit their prosecution for offending the Head of State. In a press communiqué they had launched a "solemn appeal to all militants ... and Djiboutians to come together and mobilize to thwart, by all legal and peaceful means, this deliberate policy of President Hassan Gouled Aptidon to rule by terror and force while trampling underfoot our Constitution and republican institutions". Seized of an appeal against this decision, the Constitutional Court found on 31 July 1996 inter alia that "the lack of a hearing of the deputies concerned ... constitutes a flagrant violation of the right of defence". However, this decision of the highest judicial instance in the country notwithstanding, the lower court found them guilty of offending the Head of State and sentenced them, in August 1996, to a six months' prison term, a heavy fine and, in particular, forfeiture of their civic rights for a period of five years, which meant that they would not be able to stand for parliamentary election. The source asserted that the trial in question was not fair and, in particular, that shortly before it took place, the Minister of Justice transferred and dismissed four judges of the Appeal Court and members of the Correctional Chamber, in violation of the prevailing law. The source further reported that the President of the Constitutional Court had been dismissed and one of the lawyers of the three former MPs, Mr. Aref Mohamed Aref, stood accused of fraud, allegedly without any facts having been adduced to substantiate the accusation.

Observation

85. The Special Rapporteur awaits a response from the Government to this communication.

Egypt

Communication to the Government

86. On 18 October 1998, the Special Rapporteur sent a letter concerning the dissolution of the Egyptian Bar Association (EBA) and of the country's regional bar associations, and the subsequent appointment of sequestrators to administer the EBA and the regional associations. It was reported that the court-appointed sequestrators played a role in disciplinary proceedings of the legal profession. The source further alleged that the Government had been

stalling the electoral process for the Bar Council of the EBA, on the pretext of the inadequacy of information in the registry concerning those individuals who would be eligible to vote for the leadership of the Bar Council.

Observation

87. The Special Rapporteur awaits a response from the Government to this communication.

Equatorial Guinea

Communication to the Government

88. On 26 August 1998, the Special Rapporteur sent a communication to the Government concerning a lawyer, José Olé Obono, who was arrested at his home on 21 July 1998 and detained at the police station in Malabo before being provisionally released on 21 August 1998. It was alleged that Mr. Olé Obono was arrested solely because he sought to prevent the admission, as evidence, of statements made under torture by detainees on trial for alleged involvement in an attack on a military barracks on Bioko Island on 21 January 1998. The source also reported that both Mr. Olé Obono and another lawyer involved in the case, Colonel Lorenzo Ondó Ela Mangue, received death threats after they had informed the court of systematic torture of those detainees. Further, the source reported that Mr. Olé Obono was treated in a degrading way while in detention. Specifically, the Special Rapporteur was informed that he was forced to wash a car and sweep the street, and to use a cardboard box in his cell as a toilet.

Observation

89. The Special Rapporteur awaits a response from the Government to this communication.

France

Communication from the Government

90. On 13 February 1998, the Government sent a letter to the Special Rapporteur in reference to his letter of 7 November 1997 in which he had asked for information regarding the strike by lawyers of the French Bar Association, organized on 6 November 1997, to protest the lack of resources available to the judiciary (see E/CN.4/1998/39, para. 68). The Bar Association claimed that that situation impaired the independence of the French judicial system.

91. The Government informed the Special Rapporteur that while it was true that the numerous jurisdictions in France were encumbered by their workload and that, often, delays in hearing of cases were abnormally long, the public powers completely recognized the problem and were now in the process of resolving it. In that regard, the Government enclosed with its letter the text of the justice reform presented by the Garde des Sceaux. The reform was intended to make the institutions of justice more efficient, while reinforcing their independence. Concerning this reform, the Government stated that it was

premature at that stage to say more: there would be a debate on the proposed reform in the National Assembly later in the month. The planned laws would then be prepared and put in place by the Government.

92. The Government conceded that the delays in the justice system continued to be a major cause of the strike of 6 November 1997, but felt it was difficult to make a direct link between that situation and the independence of the French judicial system, pointing out that France was a party to international instruments that called upon States parties to respect the independence of the judiciary, but also noting that those instruments allowed for reasonable delays in judicial procedures. The Government also informed the Special Rapporteur that while it was true that France was sometimes criticized for such delays, notably before the European Court in Strasbourg, France was not criticized on the fundamental independence of the judiciary.

93. The Government concluded by stating that the fundamental principles of the independence of the judicial system, to which the Special Rapporteur referred, were not compromised by delays in judicial proceedings.

Observations

94. The Special Rapporteur will continue to monitor reform developments in France.

Georgia

95. In his report to the fifty-fourth session of the Commission on Human Rights (E/CN.4/1998/39, para. 71), the Special Rapporteur made reference to a letter dated 19 January 1998 from the Government transmitting the Basic Law on courts of general jurisdiction, which had been adopted by the Parliament on 13 July 1997, and a document containing an assessment of the judicial situation in Georgia. The Government had sought the comments of the High Commissioner on the Basic Law. The Special Rapporteur regrets that he has been unable to complete his study of these materials. He will transmit directly to the Government of Georgia his views on these documents.

Haiti

96. In his report to the General Assembly (A/53/355, para. 22), the independent expert on Haiti reported that over the past year, Haiti had begun facing the challenge of putting into place a modern, effective, independent, democratic, equitable and accessible justice system. In undertaking that reform Haiti had benefited from a programme of technical assistance to the Preparatory Commission for the Reform of Justice (CPRDJ), sponsored by the European Commission. CPRDJ would provide a report recommending the necessary components of, and a plan of action for, justice system reform in Haiti.

97. In addition, the Ministry of Justice had set up a "Bureau de controle de détention préventive" to deal with the large number of preventive detainees, that is, detainees who were incarcerated, but who had not been tried and convicted. In the context of that initiative, judges had regularly visited prisons in order to hear some of the backlog of cases.

Observations

98. The Special Rapporteur will continue to liaise with the independent expert on Haiti over the reform proposals.

India

Communication to the Government

99. On 1 September 1998, the Special Rapporteur sent a communication to the Government of India to express concern over allegations he had received regarding lawyer and human rights defender, Daljit Singh Rajput, who was allegedly arrested by Punjab police on 27 July 1998. It was reported that two cases had been filed against him in connection with a conspiracy to secure the escape of prisoners from Burail jail, Chandigarh. His application for bail was rejected on 4 August 1998, reportedly because the charges against him were thought too serious. It was further reported that the police had interrogated those in detention and had attempted to persuade them to implicate human rights lawyers in the conspiracy. As a result, several lawyers personally presented the Chief Justice of the Punjab High Court with a petition on 11 August 1998 appealing to him to prevent their arbitrary arrest and requesting him to ensure that lawyers should only be arrested with the prior permission of the High Court. The petition was signed by Nakiran Singh, Amar Singh Chahal, Rajvinder Singh Bains, Ranjan Lakhanpal, Puran Singh Hundal and Arunjeev Singh Walia.

Communication from the Government

100. In a note verbale dated 9 March 1998 to the Office of the High Commissioner for Human Rights, the Government of India transmitted a response to the Special Rapporteur's letter of 1 August 1997 concerning the harassment and intimidation of Mr. Jagmohan Singh (E/CN.4/1998/39, para. 77). The Government of Punjab informed the Special Rapporteur that it had inquired into the allegations forwarded by him and found that the allegations were without basis. The Government stated that it was true that the residence of Mr. Jagmohan Singh had been searched by police officers. This was, however, in connection with criminal complaints which had been filed in the Khanna police station alleging that Mr. Singh was harbouring known terrorists. Mr. Singh had been arrested and questioned in order to inquire into those complaints and two cases had been registered against him. He had, however, subsequently been acquitted of all charges. The allegations that Mr. Singh's home had been raided over 100 times were without foundation. There was also no substance to the allegation that Mr. Singh had been aggressively questioned and that his picture had been displayed publicly in a police station. The above incident had taken place several years previously and Mr. Singh had since informed the concerned authorities through a sworn affidavit that he was enjoying a normal and tranquil life and had no complaint against the behaviour of the local police.

Observation

101. The Special Rapporteur thanks the Government and is pleased to note that Mr. Singh was acquitted. The Special Rapporteur is awaiting a response to his communication dated 1 September 1998.

Indonesia

Communication to the Government

102. On 11 March 1998, the Special Rapporteur sent a letter to the Government concerning the disappearance of Mr. Desmond J. Mahesa, a lawyer, aged 33, who is the director of the Jakarta Branch of the Nusantara Legal Aid Institute (LBH Nusantra). According to the source, Mr. Mahesa had not been seen since 3 February 1998, when he was visited by military intelligence agents. The source reported that Mr. Mahesa was suspected to be in the illegal custody of the military intelligence agency, BIA. The source also expressed fears that he might be subjected to psychological and/or physical torture.

Observation

103. The Special Rapporteur awaits a response from the Government to this communication.

Iran (Islamic Republic of)

104. The Special Rapporteur has taken note of the report of the Special Representative on the situation of human rights in the Islamic Republic of Iran (E/CN.4/1999/32). In this report, the Special Representative notes the emergence of debate in Iran about the judiciary and the legal system. The Special Representative has been informed that a court reform bill concerning the civil and revolutionary courts (containing some 800 articles) which has been under discussion in the Majlis Judiciary Committee for two years, is to be debated in the Majlis this month.

105. The Special Representative reports the need for reform of the Clerics Court, which has tended to be an arbitrary and secretive tribunal. Such practices serve to deny a defendant the right to a fair trial.

106. In 1997, following the enactment of a new Majlis law (under which candidates are screened by the Judges Court), elections were held for positions on the Bar Executive Council. The Bar Association is beginning to address the issue of the shortage of lawyers, and the issue of access to lawyers in Iran.

Observations

107. The Special Rapporteur will continue to liaise with the Special Representative for more information on these developments.

Israel

108. The Special Rapporteur has taken note of the report to the General Assembly of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (A/53/661, paras. 118-119). The Special Committee reported on the situation of persons detained in Israel without legal entry permits and who are subjected to summary trials with no qualified legal assistance. It was reported that many prisoners were not aware of their rights and that since there were no lawyers to advise them, such persons often received heavy penalties for offences not requiring detention and paid large fines.

109. The Special Committee also reported that there was no due process of law. Military courts were often composed of officers without legal background, some being settlers who were known by Palestinians to hold extremist views.

110. The Special Committee also reported that Palestinian lawyers were not eligible to represent prisoners before Israeli courts because they were not members of the Israeli Bar. Also, not all prisoners could afford to pay the fees of an Israeli lawyer, although some Israeli lawyers are hired for Palestinians through human rights organizations. Further, Palestinian lawyers were denied access to centres of detention and to their clients since they were often unable to obtain the necessary permits to enter Israel, in particular if they were from the Gaza Strip.

Observations

111. The Special Rapporteur will continue to liaise with the Special Committee concerning these issues.

Kenya

Communication to the Government

112. On 26 August 1998, the Special Rapporteur sent a communication to the Government concerning Mr. Juma Kiplenge, a lawyer and human rights defender, who was on bail at the time awaiting trial on charges of incitement to violence and unlawful assembly. According to the source, Mr. Kiplenge and 13 others were arrested and charged after organizing and attending a day-long cultural event in October 1997 which was violently broken up by the police. The source claimed that the charges of unlawful assembly and incitement to violence had been brought despite the fact that no licence was required for such a gathering and the only violence that occurred was on the part of the police. The source further reported that the next hearing in the case was due to take place on 31 August 1998. It was alleged that the magistrate hearing the case had reportedly stated at another hearing of the case in November 1997 that he would convict the defendants regardless of the evidence produced in court "because they are troublemakers". The case was being heard at the Magistrate's Court in Kabarnet in western Kenya. The magistrate hearing the case was reportedly a lay magistrate with no legal training.

Communication from the Government

113. On 6 November 1998, the Deputy Solicitor-General of Kenya sent a letter in reference to the Special Rapporteur's letter of 26 August 1998 concerning Mr. Juma Kiplenge and 13 others. The Deputy Solicitor-General informed the Special Rapporteur that the Attorney-General had entered a nolle prosequi in respect of all the cases.

Observations

114. The Special Rapporteur thanks the Government of Kenya and is pleased to note that the charges against Mr. Kiplenge were withdrawn.

Malaysia

115. In his fourth report to the Commission on Human Rights, the Special Rapporteur drew attention to the continuation of the four lawsuits filed against him for defamation. In an addendum (E/CN.4/1998/39/Add.5), the Special Rapporteur described how the Federal Court of Malaysia had refused to grant him leave to appeal to that court. As such, the Special Rapporteur had exhausted all his legal remedies on the issue of immunity before the Malaysian courts.

116. Following this refusal the United Nations Secretary-General sent Maître Yves Fortier to Kuala Lumpur as his special envoy in late February 1998 to seek with the competent authorities in Malaysia a resolution of the dispute on the immunity issue. After failure to reach a resolution the Secretary-General sent the same envoy again, in July 1998, to Kuala Lumpur to resolve the dispute. That attempt too failed.

117. Having exhausted his diplomatic efforts, the Secretary-General urged the Economic and Social Council at its session in New York, on 28 July 1998, to seek a resolution by referring the dispute, under section 30 of the Convention on the Privileges and Immunities of the United Nations, to the International Court of Justice (ICJ) for an advisory opinion. On 5 August the Council adopted a resolution without a vote and referred the dispute to ICJ.

118. Upon directions given by ICJ to Member States to submit written statements, seven Member States did so. In addition to Malaysia, they were: Costa Rica, Germany, Italy, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Office of Legal Affairs of the United Nations also submitted a written statement. ICJ heard oral submissions at the Hague from 7 to 10 December. The Office of Legal Affairs of the United Nations, Malaysia, Costa Rica and Italy made oral submissions.

119. At the conclusion the President of ICJ stated that the Court would deliver its opinion sometime in the spring of 1999.

120. In the meantime, the Malaysian courts have programmed hearings of the Special Rapporteur's appeals/applications in the four lawsuits for the first

week of February 1999. ICJ was informed by the Government of Malaysia that those hearings would be further postponed in the event that the ICJ opinion had not been delivered by then.

121. In another development, the Special Rapporteur sent three communications to the Government of Malaysia on 28 September, 9 October and 30 November 1998 in connection with allegations of harassment of defence lawyers engaged in the trial of Datuk Anwar Ibrahim, the former Deputy Prime Minister of Malaysia. The 30 November communication was with regard to the committal of lawyer Zainur Zakaria, one of Datuk Anwar's lawyers to three months' imprisonment for contempt of court for having filed an application in court on behalf of his client.

Observations

122. The Special Rapporteur is awaiting the Government's response to these communications.

123. In the event that the ICJ advisory opinion is delivered before the Commission session, the Special Rapporteur will prepare a summary for the Commission.

New Zealand

Communication to the Government

124. On 11 November 1998, the Special Rapporteur sent a letter to the Government concerning the case of Mr. Moti Singh and the conduct of Judge Bouchier of the Otahuhu District Court in the adjudication of that case. Allegedly, Mr. Singh had lodged a criminal complaint against a third party, who was accused of theft. The police investigation initially determined that there were sufficient grounds for proceeding with the prosecution on 6 July 1996; however, after certain specific comments made by Judge Bouchier, the police decided not to proceed with the prosecution on 4 December 1996. Reportedly, Judge Bouchier made comments, in private and in public, that resulted in the police decision not to prosecute. Of particular concern is the allegation that the Judge made these comments without considering the facts of the case. Supposedly, her conclusions were based solely on her prior experiences with Mr. Singh, when he had appeared as a defendant in her court. After an investigation by Judge R.L. Young, the Chief Judge of the District Court, Judge Bouchier was not formally reprimanded (although she did express regret at making those comments and provided an apology for any embarrassment that may have resulted). Judge Young indicated that although the criminal complaint had been dropped, Mr. Singh could still seek compensation through the exercise of his civil rights.

Observations

125. The Special Rapporteur awaits a response from the Government.

Nigeria

Press statement

126. On 1 May 1998, the Special Rapporteur joined the High Commissioner for Human Rights, the Special Rapporteur on the situation of human rights in Nigeria and the Special Rapporteur on extrajudicial, summary or arbitrary executions in issuing a press statement expressing deep concern at the sentencing to death in Nigeria of six defendants on charges of treason on 28 April 1998. A total of 30 persons had been charged in connection with an alleged coup plot announced by the Government of Nigeria in December 1997. The ad hoc military tribunal which convicted and sentenced the individuals failed to meet regional and international standards protecting the defendant and ensuring a fair trial. The tribunal was comprised of military officers operating outside of the normal judicial system, most of the evidence was heard in secret and no right of appeal was provided to the defendants.

Communication to the Government

127. On 18 March 1998, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on the situation of human rights in Nigeria concerning the arrest of the following individuals:

(a) Felix Morka, lawyer and Executive Director of the Social and Economic Rights Action Centre in Lagos was reportedly detained by the State Security Service on 16 March at the Lagos Murthala Mohammed International Airport upon his arrival at approximately 2 p.m. to board a plane to Nairobi to attend a meeting with the Ford Foundation. The source reports that Mr. Morka is thought to be in custody at Awolowo Road, Ikoyi, Lagos;

(b) Lawyer and human rights activist Femi Falana was reportedly arrested on 12 March with seven other people. According to the source, Falana and the others were arrested at a hotel in Ilorin during a conference and are being held without charge at the Ilorin command of the State Security Service;

(c) Olisa Agbakoba, ex-President of the Civil Liberties Organization (CLO), President of AFRONET and President of the United Action for Democracy (UAD) was reportedly arrested on 3 March 1998. According to the source, Mr. Agbakoba was attacked and then arrested by members of the Nigerian Police when he tried to speak at a pro-democracy rally, organized by UAD in Yaba Lagos. During the rally, 36 other people were reportedly arrested. Mr. Agbakoba was detained for 24 hours and then brought before a magistrate who released him under caution. The arrest was later justified by the Police Commissioner on the grounds that the meeting had not been authorized. Mr. Agbakoba launched an appeal in the High Federal Court challenging his arrest and requesting that he be awarded damages.

128. On 8 June 1998, the Special Rapporteur sent an urgent appeal jointly with the Chairman-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the situation of human rights in Nigeria and the Special Rapporteur on freedom of opinion and expression concerning the case of Mr. Niran Malaolu, the editor of an independent Nigerian daily newspaper, The Diet. According to the source, Mr. Malaolu was arrested at the editorial

offices of the newspaper on 28 December 1997, allegedly by armed soldiers of the Military Intelligence Directorate (DMI). Mr. Malaolu was held without charges until 14 February 1998, when he was brought before a Special Military Tribunal constituted under the Treason and Other Offences (Special Military Tribunal) Decree No. 1 of 1986, on secret charges. Prior to his arraignment before the tribunal, Mr. Malaolu was denied access to a lawyer, a doctor and members of his family, and remanded at a military detention facility in Lagos, until he was moved to the northern city of Jos, where the trial took place. After a secret trial, the tribunal's president announced, on 28 April 1998, that Mr. Malaolu had been found guilty of concealment of treason and sentenced him to life imprisonment. According to the source, Mr. Malaolu was punished by the Nigerian military authorities for news stories published by his paper concerning an alleged coup plot involving Lieutenant-General Oladipo Diya, as well as other military officers and civilians who were also convicted by the tribunal and given sentences ranging from prison terms to death by firing squad.

128. On 8 June 1998, the Special Rapporteur sent an urgent action jointly with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in Nigeria concerning the 27 crew members of the cargo ship Dubai Valour, who reportedly had been kept forcibly on board the ship since 8 August 1997. According to the information received, upon completion of the discharge of the cargo in Nigeria on 8 August 1997, the cargo's receivers, Lonestar Nigeria, impounded the ship for a claim equivalent to US$ 17 million. Although the ship's owner hired local lawyers and various attempts were made to bring the matter before the local courts, these attempts were frustrated by the claimants. On 22 August 1997, the Federal High Court in Lagos ordered that the ship be released against a letter of undertaking in the amount of US$ 1 million. This letter was provided, but the ship was unable to leave port, owing to difficulties encountered with local agents appointed by Lonestar. Thereafter, the Area Naval Commander refused to accept the release order; in addition, the Nigerian Port Authority advised that it had received a letter from Lonestar advising that the ship should not be allowed to leave port. The shipowner's lawyer then met with the Chief of Naval Staff and asked for his intervention, and also requested the intercession of the Chief Judge of the Federal High Court; his efforts were to no avail. On 30 September 1997, the High Court order facilitating the release of the cargo was stayed, after an application by the claimants. There has been no movement since then.

Report of the Special Rapporteur on the situation of human rights in Nigeria

130. The Special Rapporteur has taken note of the report to the Commission on Human Rights of the Special Rapporteur on the situation of human rights in Nigeria (E/CN.4/1999/36). In his report, the Special Rapporteur on the situation of human rights in Nigeria informs the Commission that for the first time in 19 years, the Supreme Court acquired, on 25 November 1998, its full complement of justices, with the appointment of six new justices. The number has thereby been brought to 15 in addition to the Chief Justice of Nigeria (as provided for by the 1979 Constitution of the Federal Republic of Nigeria). In addition, 24 new justices of the Court of Appeal were appointed by the

Provisional Ruling Council, bringing their total number to 50 (including the President). This brings the Court of Appeal to its full capacity in accordance with the Court of Appeal Act.

131. General Abubakar's promise to ensure the financial independence of the judiciary by providing it with funds from the consolidated revenue is a further sign of the substantial efforts being made to unfetter the judicial system in Nigeria.

Observations

132. The Special Rapporteur awaits a response from the Government to the joint urgent appeals. He is pleased to note that some improvements are being made in the justice system in Nigeria.

Pakistan

Communication to the Government

133. On 16 September 1998, the Special Rapporteur sent a letter to the Government recalling his communications dated 28 September 1995, 17 January 1996, 23 September 1997, 16 October 1997 and 11 December 1997 in which he had requested to lead a mission to investigate the state of independence of the judiciary and lawyers in Pakistan, and seeking a response from the Government as to whether it would be possible to undertake such a mission.

Peru

Communication to the Government

134. On 1 May 1998, the Special Rapporteur sent an urgent appeal to the Government concerning Mrs. Delia Revoredo, a former member of the Constitutional Court of Peru and the current Dean of the Colegio de Abogados of Lima. It was reported that Mrs. Revoredo had announced at a press conference on 12 April 1998 that she was leaving the country because she had received death threats. Mrs. Revoredo stated that the threats against her had commenced when she had publicly expressed her opposition to the decision of President Alberto Fujimori to seek a third term in office. In 1996, Mrs. Revoredo was one of seven judges elected by the Congress to be a member of the Constitutional Court of Peru. In 1997, she and two other judges, Manuel Aguirre Roca and Guillermo Rey Terry, held that it was unconstitutional for President Fujimori to present himself for a third term in the presidential elections to be held in the year 2000. The Congress of Peru then removed her and the two other judges from the Constitutional Court. In December 1997, Mrs. Revoredo was elected Dean of the Colegio de Abogados of Lima. She publicly announced that she would implement a policy in favour of the defence of human rights and against corruption, and she called upon the National Council of the Magistracy to initiate investigations against various judges suspected of corruption. It was reported that Mrs. Revoredo had departed for Costa Rica with her husband Jaime Mur to seek political asylum. Her children, however, remained in Lima, where they were continuing to receive threats on the telephone.

135. On 13 May 1998, the Special Rapporteur sent an urgent appeal to the Government concerning Heriberto Benítez Rivas, a human rights lawyer. It was reported that he had begun receiving death threats at his home in Lima in December 1997 and that they had continued during the month of April 1998. Reportedly, the threats were related to his work for human rights. Mr. Benítez is the lawyer for Leonor Rosa Bustamante, a former agent of the Intelligence Service of the Army (SIE) who was tortured by SIE members to extract information about security plans. Mr. Benítez also represents Gustavo Adolfo Cesti Hurtado, a retired army Captain who had been sentenced to four years' imprisonment by a military tribunal for the crime of fraud. Mr. Benítez had also informed the United Nations of the case of Mrs. Delia Revoredo, who had fled the country and sought political asylum in Costa Rica after receiving death threats.

136. On 14 July 1998, the Special Rapporteur sent an urgent appeal to the Government concerning Mr. Francisco Soberón, President of the Peruvian Association for Human Rights (APRODEH) and Vice-President of the International Federation of Human Rights (FIDH). It was reported that, on 19 June 1998, a message containing threats against Mr. Francisco Soberón appeared on the association's fax. This letter accused Mr. Soberón of being the accomplice of numerous terrorists and of being in contact with Mr. Salas and Mrs. Zanata, who are described in the letter as traitors and made the subject of degrading comments. Mr. Salas is a captain in the police and Mrs. Zanata is a secret agent. Both were, at the time, refugees in the United States because of threats directed against them. In addition to the threats contained in this letter, the language seemed to indicate that Mr. Soberón was closely watched.

137. On 19 November 1998, the Special Rapporteur sent a letter to the Government concerning the safety of Ms. Elba Greta Minaya Calle. According to the source, Ms. Calle has been the target of intimidation because of her independent exercise of professional duties. On 22 September 1998, she is alleged to have been stopped by a police officer based at the Cotabambas police station, for no apparent reason. This action and previous allegations of harassment appear to delineate a concerted effort to discourage Ms. Calle's independence as a judge.

Communication from the Government

138. On 3 March 1998, the Government sent a note verbale informing the Office of the High Commissioner for Human Rights about recent steps it had taken in the development of human rights. The Government reaffirmed its firm intent to promote and protect human rights and its desire to use all of its resources to raise the level of human rights in Peru. An example of this firm political intent was the adoption of Law No. 26926, modifying several articles of the Penal Code and recognizing genocide, enforced disappearances and torture as crimes against humanity. The text of the law was attached to the note verbale.

139. On 28 April 1998, the Government sent a note verbale to the Office of the High Commissioner for Human Rights stating that on 3 April 1998 Law No. 26940 had been promulgated. A copy of the law was attached to the note verbale. The Government requested that the information be transmitted to the special rapporteurs and working groups of the Commission on Human Rights,

in particular the Working Group on Arbitrary Detention, as well as the relevant Committees. The Government indicated that that law would have the effect of increasing the powers of the ad hoc commission created by Law No. 26655, the Pardons Commission, enabling it better to know, evaluate, qualify and propose to the President of the Republic the commutation of sentences (on an exceptional basis) by which people have been deprived of their liberty. The mandate of that ad hoc commission had been extended until 31 December 1998.

140. On 14 August 1998, the Government sent a note verbale to the Office of the High Commissioner of Human Rights in response to the urgent appeal transmitted by the Special Rapporteur on 14 July 1998 concerning Mr. Francisco Soberón. The Government wished to communicate to the Special Rapporteur that it had taken note of his communication and had ordered an investigation of the case, the results of which he would be informed of in due course. Further, the Government had ordered that all the necessary measures be taken to guarantee the security and physical integrity of Mr. Soberón, in the framework of the policy of the promotion and protection of human rights that he had pledged to expand.

Observations

141. The Special Rapporteur is awaiting a response to his communications of 1 May, 13 May and 19 November 1998. He thanks the Government for its response of 14 August 1998 and is pleased to learn of the measures taken to guarantee Mr. Soberón's security. He has also taken note of the other communications sent to the Office of the High Commissioner for Human Rights.

Philippines

Communication to the Government

142. On 20 February 1998, the Special Rapporteur sent a letter to the Government of the Philippines concerning lawyers Romeo T. Capulong, Marie Yuviengo and Rolando Rico Olalia. According to information received, they have been the subject of harassment related to their legal representation of State witnesses in the case against military officers implicated in the torture and murder of the labour leader Rolando Olalia in 1986. The source further reported that on or around 2 February 1998, the office of the Public Interest Law Center was broken into, confidential case files were forced open and searched, and the central processing unit of a computer was removed along with 1,700 pesos in cash. Moreover, it was reported that, prior to that incident, the above-mentioned lawyers had received telephone calls from anonymous persons requesting information about their movements. In addition, their office had been visited by several suspicious persons purporting to be seeking legal assistance. One of those persons had produced an identity card dating from 1967 under the name of a former deceased governor of a province. It had also been reported that attorney Capalong had been subjected to surveillance. On 13 January 1998 at midnight, a van was reportedly seen being driven around his home and this action was repeated at about 9 p.m. on 2 February 1998. The source further reported that the van was believed to be a Tamaraw Fx bearing the number plate 347, and that three men had been seen

inside it. All of those acts reportedly were connected with the murder charges filed against several high-ranking former and current military officers on 12 January 1998 by the above-mentioned lawyers.

143. On 12 May 1998, the Special Rapporteur sent an urgent action jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning José Manuel Diokno, Vice-Chair of the Free Legal Assistance Group (FLAG). It was reported that Mr. Diokno had received a written death threat in connection with his representation of State witnesses in the Kuratong Baleleng case, a case involving the killing of 11 persons by members of the Philippine National Police in May 1995.

Communication from the Government

144. On 18 March 1998, the Government sent a letter to the Special Rapporteur in response to his letter of 10 December 1997 concerning the case of lawyer Nicolas Ruiz and Mr. Jevee Patalita. The Government provided the following information.

145. On 18 July 1997, the Supreme Court issued a writ of habeas corpus directing the respondents to respond to the writ not later than 22 July 1997 to Executive Judge Estrella Trias Estrada, Regional Trial Court, Quezon City, and to appear and produce the disappeared persons, attorney Ruiz and Mr. Patalita, at a hearing before that judge, also on the same date. Judge Estrada was further directed to try and decide the case on its merits and thereafter furnish the High Court with a copy of her decision.

146. On 22 July 1997, the respondents in the petition for habeas corpus of attorney Nicolas Ruiz and Jevee Patalita, docketed as G.R. No. 129635 and entitled "Benedicta N. Ruiz and Nicolas Giovanni N. Ruiz, Petitioners, versus Brig. Gen. Benjamin Libarnes, Brig. Gen. José Calimlim and Director Santiago Toledo, Respondents" made a return of the writ stating therein that they did not have custody of attorney Ruiz and Mr. Patalita. However, the respondents filed with the Court of Appeals a petition for certiorari and prohibition (with an urgent plea for the issuance of a temporary restraining order and/or writ of preliminary injunctions) docketed as CA-G.R. No. SP. 41980 and entitled "Maj. Gen. Benjamin Libarnes, et al., Petitioners, versus Hon. Estrella Estrada and Benedicta N. Ruiz et al., Respondents".

147. On 20 August 1997, a temporary restraining order was issued by the 10th Division of the Court of Appeals restraining the respondent judge from continuing with proceedings in the petition for habeas corpus. Accordingly, the hearing of the petition for habeas corpus was suspended.

148. On 27 October 1997, a writ of preliminary injunction was issued by the Court of Appeals directing the public and private respondents therein to cease from taking any further action in G.R. No. 129635 pending the final resolution of the petition. As of the date of the Government's letter, the Court of Appeals had not made a final decision in connection with the petition.

149. The combined efforts of elements of the Philippine National Police and the National Bureau of Investigation were being exerted to locate the

whereabouts of the alleged disappeared persons. The case was part of a larger drug-related case involving an alleged drug lord whose extradition was being sought from Hong Kong. The Government emphasized that it took the matter seriously in the light of its determination to combat the drug menace in the Philippines. Since its investigations were still continuing and considering that the case of Mr. Ruiz and Mr. Patalita was before the courts, detailed information could not be provided at that time.

Observations

150. The Special Rapporteur thanks the Government for its response. However, he has heard nothing further concerning the investigations into the disappearances of Nicolas Ruiz and Jevee Patalita

Russian Federation

Communication to the Government

151. On 19 November 1998, the Special Rapporteur sent a letter to the Government concerning the case of Vasiliy Rakovich. Allegedly, Mr. Rakovich was attacked on 23 October 1998, during a lunch break in the trial of Vasiliy Chaikin. Mr. Rakovich was Mr. Chaikin's defence counsel at the time; the case was being heard in the City Court of Stanitsa Leningradskaya, in the Krasnodar region. Supposedly, the attack was motivated by Mr. Rakovich's call for an investigation into Sergey Tsaturyan's interrogation of witnesses in the Chaikin case. Mr. Tsaturyan is the chief investigator in Vasiliy Chaikin's case.

Observation

152. The Special Rapporteur awaits a response from the Government.

Rwanda

153. In his report to the General Assembly (A/53/402, paras. 40-49), the Special Representative of the Commission on Human Rights on the situation of human rights in Rwanda reported that there had been some improvement in the administration of justice in Rwanda in the past year. For example, the Office of the Prosecutor-General had initiated "group trials" in an attempt to alleviate the burden on the justice system, and there had been an improvement in access by civil parties to legal representation in Rwanda. Further, the Special Representative commended the rulings handed down by the International Criminal Tribunal for Rwanda and hoped that those verdicts would serve as the first step on the path to eradicating impunity.

154. There remained, however, concerns about the lack of adequate financial and human resources to support the effective functioning of an independent and impartial justice system in Rwanda.

Observation

155. The Special Rapporteur shares the concerns of the Special Representative over the lack of resources for the judiciary.

Sri Lanka

Communication to the Government

156. On 11 August 1998, the Special Rapporteur sent an urgent appeal jointly with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture concerning Mr. Weerasinghe Arrachige Janaka Chaminda. According to information received, he was arrested on 6 August 1998 at 3.15 p.m. and allegedly brought to the Ja-ela police station, where he was detained. He was reportedly beaten by a police inspector on several occasions during the day and the night of his arrest. Mr. Milroy, who reportedly went to visit him, was said also to have been detained at the same police station, where he was allegedly beaten by a police constable. It was alleged that they had not been brought before a judicial authority since their arrest, had not been charged and had been denied access to a legal adviser. Both are said to have been denied access to their families. Furthermore, fears were expressed that the above-named persons might continue to be at risk of torture and other forms of ill-treatment.

157. On 11 November 1998, the Special Rapporteur sent a letter to the Government concerning allegations reported in the Sunday Observer, a prominent Sri Lankan newspaper. An article printed on 7 June 1998 alleged inappropriate conduct by an unnamed High Court judge. Specifically, the judge was accused of privately meeting with a defendant, whose case was pending in the judge's court, and another High Court judge. Although no names were provided, the resolution of this matter, either through the identification and sanctioning of the persons involved or through their exoneration, was of particular importance.

Communication from the Government

158. On 17 November 1998, the Permanent Representative of Sri Lanka to the United Nations Office in Geneva sent a letter to the Special Rapporteur informing him that the contents of his letter of 11 November 1998 had been transmitted to the relevant authorities in Sri Lanka and that a further communication would follow upon receipt of information from the authorities in Sri Lanka.

Observations

159. The Special Rapporteur awaits a response to his communication of 11 August 1998.

Sudan

Communication to the Government

160. On 16 January 1998, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on the situation of human rights in the Sudan and the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the arrest and detention of lawyers Zaki Mansour and El Eden Mohamed Ahmed, both arrested on 21 December 1997, and Yahya El Hussain, Margani El Hibir and Mahjoub Abdalla Mohamed, arrested on 1 January 1998. It was reported that

Margani El Hibir was released on 7 January 1998. According to the information received, they had been arrested in relation to a peaceful demonstration organized in Khartoum by Sudanese lawyers on 20 December 1997, in which between 1,000 and 2,000 lawyers marched to the High Court and the Ministry of Justice in Khartoum protesting the violation of human rights and the arrest and harassment of lawyers. The report expresses grave fears for their physical and psychological integrity. It was also reported that a memorandum had been distributed to the Minister of Justice requesting independence of the judiciary; the closure of all public order courts; the withdrawal of the 1993 amendments to the Advocacy Act of 1983 that denies Sudanese lawyers the right to confidentiality and places the Bar Association under the control of the Registrar of Trade Unions and the Minister of Labour; the discontinuing of arbitrary arrests and detentions and the release of all persons detained without charge; respect for the rule of law, the annulment of all constitutional decrees and laws that contradict international human rights law that has been agreed to by the Government of the Sudan; and the resumption of democracy and civil rights in the Sudan. It was also alleged that among the persons and lawyers forced to report daily to security headquarters were Ms. Ilhlam Nassir, a civil servant with the Omdurman local Council; Professor Mohammed Osman Maki, a lecturer in philosophy; and Mr. Hamid El Nur, a businessman. Moreover, lawyers El Sheik Mohamed, Ali Adam, Ms. Fatima Abu El Gasim and Abd El Hameed Khalaf Alla had been forced to stay at Security Headquarters from 6 a.m. until midnight.

161. On 23 January 1998, the Special Rapporteur sent a letter jointly with the Special Rapporteur on the situation of human rights in the Sudan concerning the arrest and detention of Mr. Gazi Suleiman, a human rights defender and lawyer. According to the information received, Mr. Suleiman was arrested in Khartoum on 20 January 1998 at 2 p.m. and brought to trial the same day at 4 p.m. It was also reported that after an adjournment of four hours, at approximately 9 p.m., a summary trial was held in which Mr. Suleiman was convicted under section 66 (spreading false news) and section 94 (failure to obey an order or summons by a government official) of the 1991 Penal Code. The basis for the charges was reportedly Mr. Suleiman's refusal to obey a summons by the Security on Saturday 17 January 1998 and public statements he had made concerning the Sudanese Bar Association and, more generally, the rule of law in Sudan. According to the source, Mr. Suleiman had reasonable grounds under the law to refuse the summons because the security officers did not present their identification papers. The source further reported that Mr. Suleiman denied the allegations of spreading false news. It was reported that Mr. Suleiman had been sentenced to five months' imprisonment and fined 500,000 Sudanese pounds and was reportedly being held at Security Headquarters before being transferred to Kober Prison.

162. On 12 May 1998, the Special Rapporteur sent a letter to the Government concerning the arrest of advocate Ali Alsayed, a leading member of the Alliance for the Restoration of Democracy (ARD), and other opposition lawyers, including Khalid Abu Elrous. According to the source, Mr. Ali Alsayed was arrested on 7 May 1998 by armed security men. He was then taken to his office, which was searched. He was detained in an unknown location and fears had been expressed for his physical and psychological integrity. The source

also alleged that advocate Khalid Abu Elrous was recently arrested, along with 83 other lawyers, members of ARD. The source reported that the arrests occurred during the referendum on the new Constitution.

163. On 23 August 1998, the Special Rapporteur sent a letter to the Government concerning Mr. Mostafa Abdel Gadir, who was reportedly detained in Khartoum in early July. The source alleged that advocate Gadir had been detained as a result of his legal representation of a number of members of the political opposition arrested in late June 1998, who had announced, pursuant to provisions of the newly enacted Constitution, that they would restart party activities immediately.

Communication from the Government

164. On 8 May 1998, the Government sent a note verbale to the Office of the High Commissioner for Human Rights, which provided, inter alia, a response to the Special Rapporteur's letter of 16 January 1998. The Government informed him that lawyers Zaki Mansour, Alla Eldin Mohamed Ahmed, Yahia Elhussein, Ihlam Nasir, Mohamed Osman Mekki, Hamid Elnur, El Sheikh Mohamed Ahmed, Ali Adam, Fatima Abuelgasim and Abdel Hameed Khalafalla had been subjected to preliminary investigation, which was conducted in a very short time and in accordance with the law. No one was detained.

165. On 11 July 1999, the Rapporteur of the Advisory Council for Human Rights of the Republic of the Sudan sent a letter to the Special Rapporteur acknowledging receipt of his letter concerning the detention of some Sudanese lawyers. After investigating the matter, the Government informed the Special Rapporteur that the allegations were not true. In particular, advocate Ali Alsayed and advocate Khalid Abu Elrous were continuing their normal life and practising their profession. However, some security officers had communicated with them on the dates mentioned in the Special Rapporteur's letter about certain incidents which had taken place at the buildings of the Bar Association in the Sudan, but they had not been detained.

166. On 26 October 1998, the Government sent a letter to the Office of the High Commissioner for Human Rights in response to the Special Rapporteur's letter dated 23 August 1998 concerning the alleged detention of advocate Mustafa Abdel Gadir. The Government informed the Special Rapporteur that advocate Abdel Gadir had never been detained as alleged and that he was free, conducting his profession and other activities.

Observations

167. The Special Rapporteur thanks the Government for its responses. However, he expresses some concern that lawyers appear to be under some form of harassment from security forces.

Trinidad and Tobago

168. On 10 October 1998, the Special Rapporteur sent an urgent appeal to the Government concerning Ms. Pamela Ramjattan, sentenced to death for the murder of her common-law husband, Mr. Alexander Jordan. Ms. Ramjattan now faces imminent execution. Based upon the information received, it appeared that a

failure of justice may have occurred insofar as the court did not take into consideration salient, mitigating factors in defence of the accused. The Special Rapporteur requested the Government to stay the proceedings to allow him to study the facts of the case in greater detail and to prepare a detailed intervention that might be submitted to the Advisory Committee on the Power of Pardon.

Observations

169. The Special Rapporteur has not yet received a response from the Government. He is also awaiting further materials from the source.

Tunisia

Communication to the Government

170. On 12 March 1998, the Special Rapporteur sent a letter to the Government concerning lawyer Radhia Nassraoui. According to the information received, her office was broken into and ransacked on 11 February 1998 around 3 a.m. and the majority of her materials were stolen. The main door of her office was forced open and badly damaged and the contents of her office, including her files, law books, telephone, fax and computer were stolen. Additionally, it was reported that Ms. Nassraoui has allegedly been the object of such attacks because of her activities in the area of the defence of human rights. It was also reported that Ms. Nassraoui has been frequently placed under surveillance by security agents and that on the day of the incident witnesses reported having seen security agents near her office.

Communication from the Government

171. On 3 June 1998, the Government sent the Special Rapporteur a response to his letter dated 12 March 1998. The Government informed the Special Rapporteur that on 12 February 1998 Ms. Nassraoui had presented through her lawyer a request to the Procurator of the Republic of the Court of First Instance of Tunisia, in which she also alleged that her office had been the object of damaging theft. On the basis of this complaint, the Procurator of the Republic had decided to open an investigation of damaging theft to the property of another. He had charged the senior judge with the investigation, who had ordered the judicial police to handle the matter. The police agents came to the site and proceeded to interview and to gather testimony in the presence of Ms. Nassraoui, who was invited by the investigators to present herself at the office of the judicial police for the purpose of making a statement. However, the interested party had not followed up on this invitation. The Government also informed the Special Rapporteur that the investigation was following its normal course with the purpose of discovering the truth and establishing the facts.

Observations

172. The Special Rapporteur thanks the Government and awaits further information on the outcome of the investigation.

Turkey

Communication to the Government

173. On 12 March 1998, the Special Rapporteur sent an urgent appeal to the Government concerning the detention of Mr. Kemal Yilmaz, a lawyer of the Bar Association of Istanbul and member of the Contemporary Lawyers Association and of the Human Rights Association of Turkey (IHD). According to the source, Mr. Yilmaz had been arrested on 21 February 1998 in Yozgat, while he was leaving the city after having visited his client in the local prison. He had been interrogated by the police, although, according to Turkish law, lawyers can only be interrogated by a prosecutor. According to the source, he was detained in Yozgat E-type prison. Mr. Yilmaz was allegedly suspected of being a liaison officer of an illegal organization. The source expressed fears that he may be subjected to psychological and/or physical torture.

174. On 26 August 1998, the Special Rapporteur sent a communication jointly with the Special Rapporteur on violence against women, its causes and consequences to the Government concerning lawyer Mrs. Sevil Dalkiliç, who was sentenced to 30 years' imprisonment in 1995, allegedly on the basis of statements which she made under torture. According to the source, Mrs. Dalkiliç was detained in March 1994 and held in the Ankara police headquarters for 15 days. During this time, she was allegedly subjected to death threats and threats of rape, sexually abused, beaten, subjected to electric shocks, hosed with pressurized water and deprived of food, sleep and access to toilet facilities. She allegedly suffered a bilaterally dislocated jaw as a result of the beating. The source further reported that the statement she had made in police custody was brought as evidence in her trial at Ankara State Security Court on charges of membership of the illegal Kurdish Workers' Party, handling explosives and separatism. The statement was not supported by any forensic evidence or eyewitness testimony. Reportedly, the only other evidence brought before the court was police statements and statements, apparently also made under duress, by other defendants in the trial. In court, Mrs. Dalkiliç retracted her statement, alleging that it had been extracted under torture. The source claims that the court conducted no investigations into her complaint.

Communication from the Government

175. On 6 May 1998, the Government sent a letter to the Special Rapporteur enclosing an information note pertaining to the case of Mr. Kemal Yilmaz. The Government informed the Special Rapporteur that Mr. Kemal Yilmaz, a lawyer, was taken under custody on 21 February 1998 in Yozgat and after his first interrogation by the Chief Prosecutor in Yozgat, he was arrested by the Criminal Court of First Instance, and kept at the Yozgat prison, on the grounds of serving the illegal, terrorist organization TKP/MI-TIKKO as a courier and providing shelter and assistance to its members.

176. During the visit paid to his clients (Mr. Hasan Durna, Mr. Erdal Cetinkaya, Mr. Ismet Cetkinaya and Mr. Ali Gocmen, all of them convicted of membership of the illegal terrorist organization TKP/MI-TIKKO) at the Yozgat prison, messages for the members of the said organization.

disguised in layers of paper tissues, as well as a written document reflecting the views and strategies of the said illegal organization were discovered on Mr. Kemal Yilmaz.

177. Mr. Yilmaz's case was later deferred to the State Security Court of Ankara on 23 February 1998. He was transferred to the Ankara Ulucanlar prison on 31 March 1998. His case was pending in the Ankara State Security Court.

178. It had been established through medical reports that he had not been subjected to torture or ill-treatment, either during the period of detention or at the time of his arrest.

179. On 27 October 1998, the Government sent a letter to the Special Rapporteur and the Special Rapporteur on violence against women, its causes and consequences in response to their letter dated 12 October 1998 concerning the case of Mrs. Sevil Dalkiliç. The Government provided the following information to the Special Rapporteurs.

180. First, Mrs. Sevil Dalkiliç, a lawyer and the Director of the Kaman local house, as well as a member of the Human Rights Association, had been taken under custody in the aftermath of an operation carried out in collaboration by the Kirşehir and Ankara Security Forces on 3 March 1994 on the grounds of her participation in the illegal action group consisting of Mr. Ibrahim Halil Ata and Mr. Ismet Ayaz, the central regional province and political representative, respectively, of the terrorist organization PKK. She was kept under custody for 14 days, according to the relevant articles of the Turkish Code of Criminal Procedures then in force, and was arrested on 17 March 1994.

181. Secondly, as a result of the interrogation of Mrs. Dalkiliç, she was found guilty of the following offences: an attempt to set fire to a forest zone in Ankara-Oran, on 15 August 1993; bombing of the Kirşehir Palace of Justice on 23 September 1993; using explosives at the Emlak Bank building in Kirşehir on 1 October 1993; using explosives at the Kirşehir Governorate building on 14 October 1993; bombing of a building belonging to a political party in Ankara on 22 December 1993; bombing of the government lodges belonging to the Ministry of Justice in Kirşehir on 1 January 1994.

182. Thirdly, Mrs. Dalkiliç's case was considered by the State Security Court of Ankara and she was sentenced to 15 years' imprisonment and payment of a fine of 1,920,000 Turkish liras, on 7 February 1995, on the grounds of her membership of an armed gang and using explosives. The verdict was appealed against to the Supreme Court of Appeals and the decision of the Ankara State Security Court was upheld on 13 October 1995.

183. Fourthly, Mrs. Dalkiliç and her lawyer had submitted, on 8 July 1994 and 14 November 1994, respectively, allegations of torture during her stay in custody. However, the forensic report issued at the end of the period she spent in custody, on 16 March 1994, confirmed that she had not been subjected to torture or ill-treatment. Moreover, Mrs. Dalkiliç, at the hearing of the State Security Court on 17 March 1994, accepted her testimony, received during her interrogation by the Security Department, and did not claim for any acts of torture or ill-treatment directed against her physical integrity.

Observations

184. The Special Rapporteur thanks the Government for its responses, but he has not been able to verify the information transmitted by the Government.

United Kingdom of Great Britain and Northern Ireland

185. In his report to the Commission on Human Rights at its fifty-fourth session on his mission to the United Kingdom (E/CN.4/1998/39/Add.4), the Special Rapporteur raised several matters of concern and made recommendations. The Government of the United Kingdom did respond. The Special Rapporteur wishes to deal with just two issues, namely, intimidation and harassment of defence lawyers and the murder of Patrick Finucane.

Intimidation and harassment of defence lawyers

186. In paragraph 38 of his report, the Special Rapporteur asserted that he was satisfied that there had been harassment and intinidation of defence lawyers by Royal Ulster Constabulary (RUC) officers. The Government responded by stating, inter alia: "This obviously is a matter of considerable concern. We would ask, however, to be provided with specific details on which the allegations are made. If there is new evidence, we will want to ensure that that is looked into". The Chief Constable of the RUC was reported to have said, "All of his complaints relate to hearsay. I'm not saying that they should not be taken seriously, but he has come to conclusions without any firm evidence". (The Sunday Business Post, 10 October 1998).

187. Special Rapporteurs on mission have no powers to compel witnesses to appear before them and record evidence on oath to substantiate any allegation, if that is what the Chief Constable meant when he called for substantiation of allegations. During his mission the Special Rapporteur listened to various personalities and studied the materials supplied to him. The fact remained that the RUC was fully aware of these complaints through NGO reports, both domestic and international. It failed to take note. In the view of the Special Rapporteur, the RUC showed complete indifference to the allegations contained in the reports from NGOs. The lawyers concerned were only about 30 of the 1,700 solicitors in Northern Ireland and could easily be identified. The Chief Constable could easily have called them for a meeting and inquired eh, they were complaining to the NGOs and not the RUC. Through such a dialogue, confidence in the RUC investigation mechanism could have been restored. This the Chief Constable failed to do and allowed the situation to deteriorate.

188. Recently a solicitor made a number of formal complaints, the investigations of which were supervised by the Independent Commission for Police Complaints (ICPC). The Special Rapporteur received information that ICPC expressed dissatisfaction with the manner in which these complaints were investigated. As a result, the Metropolitan Police of London were appointed to investigate them. The investigation is yet to be completed. This once again illustrates the lack of confidence in the RUC investigation mechanism and demonstrates further why the lawyers concerned refused to complain to the RUC.

189. The Special Rapporteur trusts that when the audio/video recording of interrogation is fully operational and the police Ombudsman scheme comes into existence on 1 March 1999, cases of harassment and intimidation of defence lawyers will be minimized. However, these mechanisms can only be effective if those who are entrusted with their implementation are committed and adequately trained to respect the rights of suspects under investigation and the role of lawyers representing them. The Special Rapporteur hopes that the Chris Patten Commission will address this issue.

The murder of Patrick Finucane

190. With regard to the murder of a prominent lawyer, Patrick Finucane, the Special Rapporteur in his report expressed his conviction that there were compelling reasons for an independent judicial inquiry. He in fact called on the Government to invoke the provisions of the Commission of Enquiry Act as was done in the case of the Bloody Sunday incident.

191. The Government's response was that there was no new evidence to justify such an inquiry. The Special Rapporteur is of the view that the Government may have misunderstood the reason for his call for such an inquiry. His concern over this murder was over doubts as to whether there was State collusion, i.e. military and/or RUC collusion, in this murder. From the materials seen by the Special Rapporteur, there is at least prima facie evidence of such collusion. His conclusion to this effect is fortified by the refusal up to now by the Government to make public the report of John Stevens' second inquiry. Even a summary of the report was not made public as was done in the earlier inquiry. The Special Rapporteur was not calling for the prosecution of anyone for the murder, in which event new evidence may be necessary.

192. In this regard, the Special Rapporteur was surprised to learn from a news report of a statement attributed to the Chief Constable of the RUC. He was reported to have said, "There never was a suggestion of RUC collusion. What John Stevens (the British Chief Constable who succeeded John Stalker to investigate RUC collusion) found was that part-time military regiment (RIR) people had been involved. There was no hint of collusion by the RUC with paramilitaries" (The Sunday Business Post, 4 October 1998).

193. The Special Rapporteur finds such a statement coming from the Chief Constable surprising. At the end of the mission in Belfast, the Special Rapporteur sought another meeting with the Chief Constable, Mr. Ronnie Flanagan. At this meeting the Special Rapporteur requested answers on this issue. The Chief Constable said that as he was not the Chief Constable at the time of the investigation he could not provide the answers and directed the Special Rapporteur to Mr. John Stevens. The Chief Constable even volunteered to call Mr. John Stevens to give him the green light to answer the Special Rapporteur's questions. When the Special Rapporteur wrote to John Stevens posing some questions (see E/CN.4/1998/39/Add.4, para. 70), he (Stevens) declined on the grounds, inter alia, that "The reports are highly classified and the authority of the above persons will be required before information is released" (E/CN.4/1998/39/Add.4, para. 71).

194. What is puzzling here is that the Chief Constable, at the meeting with the Special Rapporteur, volunteered to instruct John Stevens to answer the Special Rapporteur's questions. But John Stevens declined to answer unless he obtained permission from the Secretary of State and/or the Chief Constable. But the Chief Constable is reported to have divulged at least part of the John Stevens report to the Sunday Business Report. If a salient part of that report, considered highly classified, could be divulged to the press by the Chief Constable then why could not the entire report be made public?

195. Since the report of the Special Rapporteur was issued, his attention has been drawn to an illuminating article written by a journalist, Mr. John Ware, in the New Statesman of 24 April 1998. In the article, Mr. Ware gives details of British army collusion in murders such as that of Patrick Finucane. The article also deals with the Patrick Finucane murder. The Special Rapporteur met Mr. John Ware in London and discussed with him the contents of the article. The Special Rapporteur considers that the revelation in the article further substantiates his conclusion that there was possible security force collusion in the murder of Patrick Finucane. If new evidence is needed, there appears to be ample in the article referred to. The Chief Constable's reported disclosure to The Sunday Business Post "that part-time military regiment (RIR) people had been involved" adds further substance to the Special Rapporteur's conclusion.

196. The Special Rapporteur therefore reiterates his earlier call for a royal commission of inquiry into this murder. Only such an inquiry could finally lay to rest the lingering doubts about this brutal murder, which had a chilling effect on the independence of the legal profession in Northern Ireland.

Communication to the Government

197. On 12 August 1998, the Special Rapporteur sent a communication to the Government concerning the alleged assault of Miceal Caraher, Martin Mines and Bernard McGinn by the police following a court appearance in the Craigavon Magistrates Court in Northern Ireland. Of particular concern was the fact that the alleged assault occurred in the precincts of the court building. Further, according to the source, the allegations were raised by the solicitors of the above-named individuals with the resident magistrate, Mr. Ken Nixon. The source reported that the resident magistrate indicated to the solicitors that he had not seen anything and therefore he would not take the matter any further. The source also reported that the above-named individuals claim that their visits to court are the occasion of regular minor assaults and verbal abuse. In this regard, the Special Rapporteur had been informed by the Special Rapporteur on torture, Mr. Nigel Rodley, that he had transmitted on 28 April 1997 prior allegations concerning Mr. McGinn and Miceal Caraher. The Special Rapporteur on torture had also provided a copy of the Government's response dated 30 June 1997, in which it indicated that the allegations were the subject of an internal investigation of complaints against officers of the Royal Ulster Constabulary supervised by the Independent Commission of Police Complaints.

Observations

198. The Special Rapporteur awaits a response on the investigation into these allegations.

Yugoslavia (Federal Republic of)

Communication to the Government

199. On 6 August 1998, the Special Rapporteur transmitted an urgent appeal jointly with the Special Rapporteur on torture concerning the arrest of Mr. Destan Rukiqi, a human rights lawyer who has defended ethnic Albanian political prisoners in Kosovo in recent years and reportedly has provided information on war crimes committed by Serbian special police forces in Kosovo to the International War Crimes Tribunal for the Former Yugoslavia in the Hague. According to the source, Mr. Rukiqi was arrested on 23 July 1998 in the presence of staff of the Office of the High Commissioner for Human Rights and sentenced that same day in an expedited procedure to the maximum 60 days in prison for disturbing public order under article 6, paragraph 3 of the Serbian Law on Public Order. The source further alleged that Mr. Rukiqi was severely beaten by the police following his arrest and was hospitalized on 30 July in serious condition because of injuries to his kidneys caused by the beatings. The charges against Mr. Rukiqi were based on an investigative judge's claim that Mr. Rukiqi had insulted her by saying she had behaved like a policeman. The court decision indicated that he had made the remark in the office of the investigative judge, when she would not allow him to take notes on, but only to read, court documents relating to the defence of one of his clients. In this regard, the Special Rapporteurs had been informed that the Law on Criminal Procedure guarantees unconditional review of court files relating to a client. The source also reported that another human rights activist, Ms. Zahrida Podrimcaku, was arrested in Pristina on 9 June 1998. Ms. Podrimcaku had been investigating an incident that occurred on 31 May 1998 in the village of Poklek, in which police detained 10 ethnic Albanian men during an attack on the village. According to the source, the body of one of the men, Ardian Deliu, was found the next day, while the other nine men remain missing and are presumed dead.

Observations

200. The Special Rapporteur is awaiting a response from the Government.

Report of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia

201. The Special Rapporteur has also taken note of the report to the General Assembly of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (A/53/322), in which he stated that the need for independent investigations into mass crimes against civilians in Kosovo was urgent. Following three comprehensive field missions in 1998, the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, cited the continuing disregard of both domestic and international standards pertaining to police conduct and the treatment of detainees (A/53/322/Add.1, para. 36).

202. Trials on criminal charges relating to terrorism and anti-State activity began in the district of Prizren, resulting so far in the conviction and sentencing of all those charged. Trials were scheduled for every other

weekday until the end of October and November 1998. The Office of the High Commissioner for Human Rights monitored these proceedings throughout Kosovo (A/53/322/Add.1, para. 37).

203. The Milosevic-Holbrooke agreement of 13 October 1998 (points 11 and 12) provides amnesty for persons who took part in armed activity in Kosovo. Prior to the implementation of these regulations, the portions relating to criminal prosecution must be reviewed, approved and codified in regulations by the federal Parliament and then published in the official gazette of the Federal Republic of Yugoslavia. At the time of writing of the present report, it is unclear when regulations for amnesty for persons who took part in armed activity in Kosovo will be adopted. It was also reported by the Special Rapporteur on the human rights situation that the Serbian Ministry of Justice can issue interim instructions to suspend relevant criminal proceedings of persons charged with terrorism, until the federal Parliament has taken action (A/53/322/Add.1, para. 37).

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

204. From the number of interventions made, it will be seen that many Governments do not respond in a timely manner. The Special Rapporteur generally seeks a response from a Government within a month.

205. Several Governments to which the Special Rapporteur has made requests for *in situ* missions have not responded positively. In this connection, the Special Rapporteur would state that he seeks *in situ* missions not only to countries where judges and lawyers face problems of threats to judicial independence, but also countries where efforts are being made to improve and enhance judicial independence, so that those positive developments can be reported to the Commission. Such reports could encourage other States to emulate their efforts.

206. On the question of standards, the Special Rapporteur, while welcoming intergovernmental organizations addressing the issue of judicial and lawyers' independence, is concerned over the possible proliferation of standards. Unless standards are uniform and consistent there can be confusion. The Special Rapporteur will continue to work closely with intergovernmental organizations on this matter. If the United Nations Basic Principles are found to be too general and basic in substance then there may be a justification for reviewing them.

207. There has been an increase in the interest shown by organizations of judges and lawyers in the work of the Special Rapporteur and the status of independence globally. It is reflected in the number of invitations the Special Rapporteur has received to participate in meetings in the different regions.

208. With the increase in requests by countries, particularly countries in transition, for technical assistance and training programmes for the implementation of human rights standards, support for the rule of law and the strengthening of the administration of justice, the Special Rapporteur will work closely with the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights to assist with these activities.

209. The Special Rapporteur's mandate often requires analysis of laws and legislation. When such laws and legislation are in a language other than English, the Special Rapporteur encounters considerable difficulties in the Office of the High Commissioner for Human Rights in having such laws and legislation translated into the English language professionally. These difficulties not only impede and delay the work of the Special Rapporteur but affect the quality of his work.

B. Recommendations

210. Arising from some of the observations made earlier under country situations, his activities and the conclusions, the Special Rapporteur wishes to make some specific recommendations:

(i) In the case of the United Kingdom of Great Britain and Northern Ireland, the Special Rapporteur reiterates his earlier recommendation in paragraph 95 of his report to the Commission on Human Rights at its fifty-fourth session (E/CN.4/1998/39/Add.4) that the Government should establish an independent judicial inquiry to investigate the murder of Patrick Finucane. In this regard, the Special Rapporteur urges the Government to make public the second report of John Stevens.

(ii) In paragraph 4 of resolution 1994/41 creating this mandate, the Commission urged all Governments to assist the Special Rapporteur in the discharge of his mandate and to transmit to him all the information requested. In the spirit of this paragraph, the Special Rapporteur once again appeals to Governments to respond to his interventions promptly and attend positively to his requests to undertake in situ missions.

(iii) The Special Rapporteur calls on Governments, the national judiciaries, Bar associations and NGOs to submit to him any court judgments and any legislation affecting the independence of the judiciary and the legal profession for his consideration, irrespective of whether such judgments and legislation have the effect of enhancing or restricting judicial and lawyer independence.

(iv) The Special Rapporteur requests that he be provided with professional translation assistance in the Office of the High Commissioner for Human Rights to enable him to discharge his mandate effectively.